

CHAPTER 7 PUBLIC RECORDS

Part 1

Preserving and Transcribing Records.

- 10-7-101. "Records" construed.
- 10-7-102. Books for register's office to be furnished by county.
- 10-7-103. Records laid before county legislative body annually for examination.
- 10-7-104. Mutilated records to be transcribed - Incomplete copies.
- 10-7-105. Rebinding or copying books at expense of county.
- 10-7-106. Transcript books to be collated and certified to by register and deputy register.
- 10-7-107. Omission of probate or acknowledgment.
- 10-7-108. Entering omitted probate or acknowledgment in transcript where document in existence.
- 10-7-109. Copy of probate or acknowledgment made by clerk of court on demand.
- 10-7-110. Entry in transcript book.
- 10-7-111. Fee of clerk for copy.
- 10-7-112. Register to index transcript book or books.
- 10-7-113. Special deputies - Appointment by register necessitated.
- 10-7-114. Register's fees.
- 10-7-115. Original deposited in clerk's office.
- 10-7-116. Copy made from original - Admissibility in evidence.
- 10-7-117. Fee of clerk for copy of original.
- 10-7-118. Copies of such transcribed records - Admissibility as evidence.
- 10-7-119. County legislative bodies authorized to have record books rebound.
- 10-7-120. Liability of register and clerks suspended during rebinding.
- 10-7-121. Government records kept on computer or removable computer storage media.
- 10-7-122. [Repealed.]
- 10-7-123. Electronic access to county government information - Fees - Equal accessibility.

Part 2

Index of Public Records.

- 10-7-201. Clerks, registers, and other officers to index records.
- 10-7-202. Register's book to be indexed, direct and reverse - Computer medium.
- 10-7-203. Names in deeds of realty to be entered alphabetically in the direct and reverse indices - Other facts to be shown.
- 10-7-204. Direct and reverse indices to personalty - Manner of making.
- 10-7-205. Time of making indices - One or more indices - Mortgages and deeds of trust.
- 10-7-206. Former indices may be made in addition to required indices.
- 10-7-207. Failure to make index - Forfeiture - Qui tam action.
- 10-7-208. Penalty for failure to index records.
- 10-7-209. Cross index as to all parties in minute books and execution dockets.

10-7-210. Violations of preceding section a misdemeanor.

Part 3

Public Records Commission.

- 10-7-301. Definitions.
- 10-7-302. Public records commission created - Duties.
- 10-7-303. Records management division - Creation, disposition and preservation of records - Land, legislative and judicial records.
- 10-7-304. Records officer, systems or records analyst.
- 10-7-305. Administrative officer and secretary - Duties.
- 10-7-306. Rules and regulations of commission.
- 10-7-307. Title to and destruction of records transferred to state archives.
- 10-7-308. Title to records transferred to section.

Part 4

County Public Records Commission.

- 10-7-401. County public records commission created - Membership [Amended effective July 1, 1999. See the Compiler's Notes].
- 10-7-402. Organization of commission - Compensation - Meetings.
- 10-7-403. "Public records" defined.
- 10-7-404. Destruction of public records authorized - Conditions prerequisite to destruction - Records manual [Amended effective July 1, 1999. See the Compiler's Notes].
- 10-7-405. [Repealed.]
- 10-7-406. Original records photographed in duplicate before destruction - Stored for safekeeping - Accessible to public.
- 10-7-407. [Repealed.]
- 10-7-408. Appropriation of funds.
- 10-7-409. Charges for copies of records authorized.
- 10-7-410. Reproductions admissible as evidence.
- 10-7-411. Rules and regulations of commission.
- 10-7-412. Destruction of public records authorized - Terminated mortgages, deeds of trust, chattel mortgages.
- 10-7-413. Preservation of records of permanent value [Amended effective July 1, 1999. See the Compiler's Notes].
- 10-7-414. Transfer of records to institutions or to state library and archives to be held for historical purposes - Funds for transfer and maintenance of records.

Part 5

Miscellaneous Provisions.

- 10-7-501. Reproduction of state records on film.
- 10-7-502. Photographic copy deemed original record.
- 10-7-503. Records open to public inspection - Exceptions.
- 10-7-504. Confidential records.

- 10-7-505. Denial of access - Procedures for obtaining access - Court orders - Injunctions - Appeals - Liability for nondisclosure.
- 10-7-506. Public records having commercial value.
- 10-7-507. Records of convictions of traffic and other violations - Availability.
- 10-7-508. Access to records - Records of archival value - Retention or disposal of records.
- 10-7-509. Disposition of records.
- 10-7-510. Transfer of documents from criminal cases to not-for-profit depositories.

Part 6

Public Appointments.

- 10-7-601. Short title.
 - 10-7-602. Definitions.
 - 10-7-603. Data provided secretary.
 - 10-7-604. Updating and publishing data.
 - 10-7-605. Vacancies.
 - 10-7-606. Report.
 - 10-7-607 - 10-7-610. [Reserved.]
 - 10-7-611. Proportionate representation of minority and nonminority groups on appointed bodies.
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PART 1

PRESERVING AND TRANSCRIBING RECORDS

10-7-101. "Records" construed.

"Records," as used in this part, shall be construed to mean any records of the county legislative body and common law, circuit, criminal, or chancery court, the register's books, the surveyor's and entry taker's book, and all other public records, required by law to be kept in the several courts of this state.

[Acts 1879, ch. 115, § 2; Shan., § 3793; Code 1932, § 7698; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 15-101.]

Cross-References. Confidential information under hazardous chemical right to know law not a public record, § 50-3-2013.

Register of county, title 8, ch. 13.

Section to Section References. This chapter is referred to in §§ 4-14-308, 4-50-108, 7-86-302, 7-86-317, 16-20-103, 49-7-804, 50-3-2013, 50-6-405, 55-10-108, 56-6-803, 62-43-117, 63-51-116, 67-4-722, 68-11-904.

Law Reviews. Remedies other than the Tennessee Uniform Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Attorney General Opinions. Voter secrecy protection, OAG 96-027 (2/28/96).

Alternative Dispute Resolution Commission records, OAG 96-147 (12/18/96).

Comparative Legislation. Public records:

Ala. Code § 41-13-1 et seq.

Ark. Code § 14-15-401 et seq.

Ga. O.C.G.A. § 50-18-90 et seq.

Miss. Code Ann. § 19-15-1 et seq.

Mo. Rev. Stat. § 109.010 et seq.

N.C. Gen. Stat. § 121-1 et seq.; § 132-1 et seq.

Va. Code § 42.1-76 et seq.

Cited: Abernathy v. Whitley, 838 S.W.2d 211 (Tenn. Ct. App. 1992).

NOTES TO DECISIONS

1. Applicability.

For purposes of defining "public record" the general assembly did not have this section in mind when it enacted § 10-7-503(a). *Creative Restaurants, Inc. v. City of Memphis*, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

COLLATERAL REFERENCES

66 Am. Jur. 2d Records and Recording Laws § 1 et seq.

76 C.J.S. Records § 1 et seq.

Courts <key> 110 et seq.

Records <key> 13.

10-7-102. Books for register's office to be furnished by county.

The county legislative body, on demand of the register, shall procure for the register's office well-bound books for the purpose of registering therein such instruments of writing as are required by law to be registered, the cost of which shall be paid by the trustee of the county, on the warrant of the county executive, which shall be issued on the register producing before the county executive the receipt of the person from whom the books were purchased, and making affidavit that the register has paid, or is bound to pay, the sum specified in the receipt.

[Code 1858, § 2090 (deriv. Acts 1805, ch. 62, § 7); Shan., § 3770; Code 1932, § 7681; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A. (orig. ed.), § 15-102.]

Cross-References. Books for register's office furnished by county, § 8-13-109.

Duties of register, § 8-13-108.

Transfer to new counties, § 5-2-107.

Section to Section References. This section is referred to in § 10-7-202.

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus, § 12.

10-7-103. Records laid before county legislative body annually for examination.

The register of each county shall, once in every year, lay before the county legislative body all the records of the register's office for examination.

[Code 1858, § 2091 (deriv. Acts 1805, ch. 62, § 1); Shan., § 3771; Code 1932, § 7682; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 15-103.]

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus, § 12.

10-7-104. Mutilated records to be transcribed - Incomplete copies.

When any record book or books of the register's office of any county have been damaged or mutilated by fire or otherwise, so that any part of the record in any book is destroyed, or mutilated, or is likely to become destroyed, or mutilated by continual use,

the county legislative body of such county shall cause the same to be transcribed by the register, in a fair and legible hand, into a well-bound book or books, to be procured by the county legislative body, all such record books in the order of the dates of the original registration, marking at the top of each copy the original book and page or pages from which the transcript is made, so that no variation may appear between the pages of the transcript and those that were noted in the certificates on the original instruments; and, in all cases where the record of any word, part of word, sentence, part of sentence, or part of instrument, is destroyed, all that remains shall be copied, and the destroyed part indicated thus * * * *.

[Acts 1877, ch. 83, § 1; Shan., § 3787; Code 1932, § 7683; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 15-104.]

Cross-References. Register's fees for preservation of records, § 8-21-1001.

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus § 12.

NOTES TO DECISIONS

1. Retroactive Effect.

Where in 1876, records in register's office were partially destroyed by fire and the county court [now county legislative body] appointed a commission consisting of county judge [now county executive] and two justices to get the books transcribed and rebound, and commission gave the work to party having the lowest bid, but the register procured passage of Public Acts 1877, ch. 83 which provided that work was to be done by the register, the circuit court was required to order county to turn the books over to the low bidder, since act could not deprive bidder of his vested right in contract negotiated with the county. Beck v. Puckett, 2 Shannon's Cases 490 (1877).

10-7-105. Rebinding or copying books at expense of county.

It is the duty of all county registers to have the books of their offices copied when, in the judgment of the county legislative body, they are so worn or mutilated as to need rebinding or copying. The county legislative bodies shall make the necessary appropriations to defray the expenses of the same.

[Acts 1899, ch. 272, § 1; Shan., § 3787a1; mod. Code 1932, § 7684; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 15-105.]

Cross-References. Copy from original, §§ 10-7-116, 10-7-117.

County legislative bodies authorized to have certain record books rebound, § 10-7-119.

Liability of register and clerks suspended while record books away for rebinding, § 10-7-120.

10-7-106. Transcript books to be collated and certified to by register and deputy register.

The copies made by the register shall be faithfully collated by the register and deputy register, both of whom shall, at the end of each book of transcript, by a joint

certificate, certify that they have carefully collated the same with the original record book, and that it contains a full, true, and complete copy or transcript of the record in the original book; and in case any part of the original record is destroyed or mutilated so that the same cannot be ascertained, they shall add to their certificate the words, "so far as the same can be ascertained from its burned or mutilated condition," and the transcript shall be as effectual and valid to all intents and purposes as the original record, except as is provided in §§ 10-7-116 and 10-7-118.

[Acts 1877, ch. 83, § 2; Shan., § 3788; mod. Code 1932, § 7685; T.C.A. (orig. ed.), § 15-106.]

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus, § 12.

10-7-107. Omission of probate or acknowledgment.

When the register as transcriber finds any instrument on the original books registered without the probate or acknowledgment, the register shall leave, in the transcript by the register made, sufficient room to record the probate or acknowledgment of the instrument.

[Code 1858, § 2101 (deriv. Acts 1806, ch. 40, § 1); Shan., § 3781; mod. Code 1932, § 7686; T.C.A. (orig. ed.), § 15-107.]

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus, § 12.

10-7-108. Entering omitted probate or acknowledgment in transcript where document in existence.

Any person having such a registered instrument in such person's possession may produce it to the register as transcriber while such person is transcribing, or to the register after the transcript is completed, and have the probate or acknowledgment entered of record.

[Code 1858, § 2102 (deriv. Acts 1806, ch. 40, § 2); Shan., § 3782; mod. Code 1932, § 7687; T.C.A. (orig. ed.), § 15-108.]

10-7-109. Copy of probate or acknowledgment made by clerk of court on demand.

Any person interested in having the probate or acknowledgment of an instrument registered may apply to the clerk of the court before which the probate was made, and, having first made oath that the original instrument is not in such person's possession, power, or control, demand and receive from such person a transcript of the probate or acknowledgment, duly certified by the clerk.

[Code 1858, § 2103 (deriv. Acts 1806, ch. 40, § 3; 1807, ch. 62); Shan., § 3783; Code 1932, § 7688; T.C.A. (orig. ed.), § 15-109.]

10-7-110. Entry in transcript book.

On producing such certificate, the register as transcriber shall insert the probate or acknowledgment and certificate at the foot of the deed on the register's record, just as if the original deed had been produced.

[Code 1858, § 2104 (deriv. Acts 1806, ch. 40, § 3; 1807, ch. 62); Shan., § 3784; mod. Code 1932, § 7689; T.C.A. (orig. ed.), § 15-110.]

10-7-111. Fee of clerk for copy.

The clerk's fee for granting such copy and certificate shall be twenty-five cents (25¢).

[Code 1858, § 2105 (deriv. Acts 1806, ch. 40, § 3; 1807, ch. 62); Shan., § 3785; mod. Code 1932, § 7690; T.C.A. (orig. ed.), § 15-111.]

10-7-112. Register to index transcript book or books.

The register shall properly index such transcript book or books.

[Acts 1877, ch. 83, § 3; Shan., § 3789; Code 1932, § 7691; T.C.A. (orig. ed.), § 15-112.]

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus, § 12; 21 Tenn. Juris., Recording Acts, § 12.

10-7-113. Special deputies - Appointment by register necessitated.

The register of such county is authorized to appoint as many deputies as are necessary to ensure the completion of such transcripts at the earliest time practicable.

[Acts 1877, ch. 83, § 4; Shan., § 3790; Code 1932, § 7692; T.C.A. (orig. ed.), § 15-113.]

10-7-114. Register's fees.

For making such transcript, collation, and index, the register shall be entitled to one dollar (\$1.00) per one hundred (100) words, to be paid by the county.

[Acts 1877, ch. 83, § 4; Shan., § 3791; mod. Code 1932, § 7693; T.C.A. (orig. ed.), § 15-114; Acts 1987, ch. 80, § 1.]

10-7-115. Original deposited in clerk's office.

The original records from which the transcript has been made shall be deposited in the clerk's office of the county.

[Code 1858, § 2095 (deriv. Acts 1805, ch. 62, § 5); Shan., § 3775; Code 1932, § 7694; T.C.A. (orig. ed.), § 15-115.]

Textbooks. Tennessee Jurisprudence, 18 Tenn. Juris., Mandamus, § 12.

10-7-116. Copy made from original - Admissibility in evidence.

In case any person is dissatisfied with the transcript, and wishes to have access to the original, the clerk shall grant such person a transcript therefrom, but the same shall not be admitted as evidence unless it is found, upon examination, that the transcript in the register's office varies from the original record, so as to alter the meaning and substance thereof, in any deed or title which may be in litigation.

[Code 1858, § 2098 (deriv. Acts 1805, ch. 62, §§ 5, 8); Shan., § 3778; Code 1932, § 7695; T.C.A. (orig. ed.), § 15-116.]

Section to Section References. This section is referred to in §§ 10-7-106, 10-7-118.

10-7-117. Fee of clerk for copy of original.

When a copy of any instrument on the original books is demanded from the clerk, the clerk shall be entitled to receive one dollar (\$1.00) for making and certifying such copy, to be paid by the applicant.

[Code 1858, § 2100 (deriv. Acts 1805, ch. 62, § 5); Shan., § 3780; Code 1932, § 7696; T.C.A. (orig. ed.), § 15-117.]

10-7-118. Copies of such transcribed records - Admissibility as evidence.

Whenever the records, or any part of the records, of any of the counties are transcribed by order or authority of the county legislative body of such county, on account of the original records being mutilated, defaced, or for any other cause, a certified copy from such transcribed records shall be admissible as evidence in the several courts of this state, and shall have the same validity as if the certified copy was made from the original record, subject to the provisions of § 10-7-116.

[Acts 1879, ch. 115, § 1; Shan., § 3792; mod. Code 1932, § 7697; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 15-118.]

Cross-References. Admissibility in evidence of copy made from original, § 10-7-116.

Section to Section References. This section is referred to in § 10-7-106.

10-7-119. County legislative bodies authorized to have record books rebound.

Whenever any county legislative body of this state, on due examination as now required by law, shall ascertain that any of the books of record in the office of the register, county clerk, clerk and master, or circuit court clerk need to be rebound, in order to preserve and keep in proper condition for use such books, then the county legislative body of such a county may order and empower the chairperson of the court to take charge of such books of records, and execute a receipt for the same to the proper officer having custody of the books, and at once forward them to some good, competent, and reliable bookbinding firm or company in this state, and take a receipt from the firm or company for such books received by them, and require them to rebind the books and return them to such chairperson at as early a date as possible.

[Acts 1897, ch. 73, § 1; Shan., § 3793a1; Code 1932, § 7699; impl. am. Acts 1978, ch. 934, §§ 7, 22, 36; T.C.A. (orig. ed.), § 15-119.]

Cross-References. Register's books, county legislative body ordering to be rebound, § 10-7-105.

Section to Section References. This section is referred to in § 10-7-120.

10-7-120. Liability of register and clerks suspended during rebinding.

During the time the record book or books are kept out of the office and custody of the county clerk, clerk and master, circuit court clerk, or register, for the purpose stated in § 10-7-119, such person shall be released and held harmless and free from all liability on such person's official bond or otherwise for the proper and safekeeping of such books in such person's office.

[Acts 1897, ch. 73, § 2; Shan., § 3793a2; Code 1932, § 7700; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 15-120.]

10-7-121. Government records kept on computer or removable computer storage media.

(a) (1) Notwithstanding any other provision of law to the contrary, any information required to be kept as a record by any government official may be maintained on a computer or removable computer storage media, including CD ROM disks, instead of bound books or paper records if the following standards are met:

(A) Such information is available for public inspection, unless it is a confidential record according to law;

(B) Due care is taken to maintain any information that is a public record during the time required by law for retention;

(C) All daily data generated and stored within the computer system shall be copied to computer storage media daily, and the newly created computer storage media more than one (1) week old shall be stored at a location other than at the building where the original is maintained; and

(D) The official can provide a paper copy of the information when needed or when requested by a member of the public.

(2) Nothing in this section shall be construed to require the government official to sell or provide the media upon which such information is stored or maintained.

(b) In any county having a population of more than eight hundred thousand (800,000) according to the 1990 federal census or any subsequent federal census, all material that is maintained on a computer or removable computer storage media by the assessor of property that relates to information developed from the assessment of property or that is a record of the final assessment of property shall be made available to the public at cost within thirty (30) days of a request by a member of the public.

[Acts 1993, ch. 315, § 10; 1994, ch. 643, § 1.]

Section to Section References. This section is referred to in §§ 8-13-108, 10-7-404.

Attorney General Opinions. Legal standards governing municipal and state financial and personnel records, OAG 95-001 (1/6/95).

10-7-122. [Repealed.]

Compiler's Notes. Former § 10-7-122 (Acts 1996, ch. 784, § 1), concerning remote access to computerized records and associated fees, was repealed by Acts, 1997, ch. 304, § 4. For new law, see § 10-7-123.

Law Reviews. 1996 Real Estate Legislation: What You Don't Know *Can Hurt You* (William R. Bruce), 32 No. 6 Tenn. B.J. 12 (1996).

10-7-123. Electronic access to county government information - Fees - Equal accessibility.

(a) (1) Each county official may provide computer access and remote electronic access for inquiry only to information contained in the records of that office which are maintained on computer storage media in that office, during and after regular business hours. Such official may charge users of information provided through remote electronic access a reasonable amount sufficient to recover the costs of providing such services and for no other access services. Any such fee shall be uniformly applied. Any official providing remote electronic access to the records of that office shall implement procedures and utilize a system (equipment and software) that does not allow records of that office which may be viewed through remote electronic means to be altered, deleted or impaired in any manner. Any official providing such remote electronic access to any of the records of that office shall file a statement with the comptroller of the treasury at least thirty (30) days prior to offering such service, or if service is being offered, as of June 28, 1997, except those who have previously implemented such a system shall not be subject to these provisions. The statement shall describe the computer equipment, software and procedures used to provide remote electronic access and to ensure that this access will not allow a user to alter, delete or impair any record of the office. The cost of providing computer access or remote electronic access to local records shall not be borne by the State of Tennessee.

(2) For the purposes of this section, a reasonable fee for providing access to the remote electronic access information system shall be an amount sufficient to recover the cost of actually providing such services and no more. When determining a reasonable fee for online access to review records, such fee and consideration shall not include the cost of storage and maintenance of the records, or the cost of the electronic record storage system.

(3) Nothing in this section shall permit a fee to be charged for records that are viewed, electronic or otherwise, at the locations where they are maintained and stored.

(4) Once a remote electronic access information system is in place, access must be given to all members of the public who desire access to such records, and pay applicable reasonable fees as defined in this section, including those who may use such information for proprietary purposes.

(b) Nothing herein shall permit remote electronic access to records statutorily defined as confidential records.

(c) This section shall supersede and replace any private acts which conflict with it.

[Acts 1997, ch. 304, §§ 1-3.]

Effective Dates. Acts 1997, ch. 304, § 5. May 29, 1997.

Cross-References. Confidential records, § 10-7-504.

PART 2

INDEX OF PUBLIC RECORDS

10-7-201. Clerks, registers, and other officers to index records.

Every clerk, register, or other public officer whose duty it may be to keep record books, wherein the records of any court or of any county shall be kept, shall keep an index to each book wherein any suit, decree, judgment, sale, mortgage, transfer, lien, deed, power of attorney, or other record, shall be kept, in which index such clerk, register, or public officer shall enter in alphabetical order, under the name of each party, every suit, judgment, decree, sale, deed, mortgage, or other matter of record required by law to be by such clerk, register or other public officer entered in the record books to be kept by such clerk, register, or other officer, to the end that any judgment, decree, sale, conveyance, mortgage, or other record may be found under the name of either party to any transaction of record.

[Acts 1871, ch. 85, § 1; Shan., § 5853; Code 1932, § 10055; T.C.A. (orig. ed.), § 15-201.]

Cross-References. Depositions taken to perpetuate testimony, entering upon book, § 8-13-108.

Section to Section References. This part is referred to in § 8-13-108.

Sections 10-7-201 - 10-7-207 are referred to in § 10-7-208.

Sections 10-7-201 - 10-7-206 are referred to in § 10-7-205.

Textbooks. Tennessee Jurisprudence, 21 Tenn. Juris., Recording Acts, §§ 2, 12.

Cited: Brown v. Brown, 16 Tenn. App. 230, 64 S.W.2d 59 (1933).

NOTES TO DECISIONS

1. Repeal by Implication.

This statute operates to repeal, by implication, preexisting statutes prescribing duties and defining liabilities of registers of deeds. Maxwell v. Stuart, 99 Tenn. 407, 42 S.W. 34 (1897).

10-7-202. Register's book to be indexed, direct and reverse - Computer medium.

(a) (1) Notwithstanding any other law to the contrary, each register not maintaining all indices required by law on a medium to be read and used by means of a computer or a word processor shall procure as provided by § 10-7-102 or other general law, two (2) or more well-bound books of suitable size, volume and grade of paper, in which the register shall make, enter, and keep a general direct and general reverse index of each and every instrument filed for record or recorded in the office of register, except that

notices of completion of improvements to real estate and such other instruments that are not susceptible to direct and reverse indexation may be indexed separately using only a direct index and not entered in a reverse index.

(2) Notwithstanding any other law to the contrary, each register shall have discretion regarding whether to maintain separate indices for distinct books, files, or groups or combinations of records, or whether to combine all indices in a master direct and reverse index for all records maintained in the office of the county register.

(b) Notwithstanding any other law to the contrary, each register is authorized to maintain all indices required of the office on a medium to be read and used by means of a computer and/or word processor. If such a computer medium is used, a security copy of the medium shall be maintained and a hardcopy paper printout of the index information shall be made at least weekly in duplicate, and at least one (1) such paper copy shall be stored in a safe place other than the register's office. A computer hardcopy printout may be used in lieu of a bound book, but the register shall take due care to preserve the computer printout as a permanent record. The use of the computer hardcopy printouts by the public may be banned or restricted by each register, so long as computers or word processors are available and operable for viewing the information contained in the restricted printouts.

[Acts 1925, ch. 89, § 1; Shan. Supp., § 567a1; Code 1932, § 817; T.C.A. (orig. ed.), § 15-202; Acts 1985, ch. 212, § 1; 1988, ch. 636, § 6.]

Section to Section References. Sections 10-7-202 - 10-7-205 are referred to in § 10-7-206.

Sections 10-7-202 - 10-7-204 are referred to in § 10-7-205.

Law Reviews. The Tennessee Recording System (Toxey H. Sewell), 50 Tenn. L. Rev. 1 (1982).

DECISIONS UNDER PRIOR LAW.

NOTES TO DECISIONS

Analysis

1. Failure to Index - Liability.
2. Willful Negligence in Indexing.

1. Failure to Index - Liability.

Under §§ 8-13-110, 10-7-201 and 10-7-208 (Acts 1871, ch. 85), a register was not civilly liable for failure to index unless such failure was willful. *Maxwell v. Stuart*, 99 Tenn. 407, 42 S.W. 34 (1897).

2. Willful Negligence in Indexing.

If the register's negligence in preparing the index is gross and inexcusable and with full knowledge that he is negligent in his duty, it will be presumed that his act is willfully done. *Maxwell v. Stuart*, 99 Tenn. 407, 42 S.W. 34 (1897).

10-7-203. Names in deeds of realty to be entered alphabetically in the direct and reverse indices - Other facts to be shown.

In the general direct indices of instruments relating to real estate, the register shall enter the name of the grantor or maker of each instrument recorded, alphabetically arranged, the name of the person, firm, or corporation to whom made, the kind of instrument, its date and the date filed for record, each entry to be under the appropriate head title or column. In like manner, the register shall enter in each reverse index the name of the person, firm, or corporation to whom each conveyance or grant is made, alphabetically arranged, the name of the person, firm, or corporation or other maker by whom executed or made, the character and date of the instrument, and the date filed for record, each entry under its appropriate column or head title. In each book the register shall also enter the book and page in which each respective instrument is recorded in the appropriate column and under the appropriate heading therefor.

[Acts 1893, ch. 66, § 2; Shan., § 5856; Acts 1925, ch. 89, § 1; Shan. Supp., § 567a2; Code 1932, §§ 818, 10058; T.C.A. (orig. ed.), § 15-203.]

Cross-References. Book of trust deeds, § 8-13-108.

Cross indexing to all parties, § 10-7-209.

Depositions taken to perpetuate testimony, entering upon book, § 8-13-108.

Direct and reverse indices, § 10-7-209.

Law Reviews. The Tennessee Recording System (Toxey H. Sewell), 50 Tenn. L. Rev. 1 (1982).

10-7-204. Direct and reverse indices to personalty - Manner of making.

In the two (2) indices of instruments relating to personal property, the register shall likewise enter and keep alphabetically the names of the grantors or persons, firms, or corporations executing or making the contracts or instruments recorded in the direct index, and the name of the persons, firms, or corporations to whom the conveyances or grants are made, in alphabetical order, in the reverse index, followed by the other entries as above required in regard to instruments relating to real estate. Instruments relating to both realty and personalty shall be indexed in each of the above named sets of indices and as above required.

[Acts 1925, ch. 89, § 1; Shan. Supp., § 567a3; Code 1932, § 819; T.C.A. (orig. ed.), § 15-204.]

10-7-205. Time of making indices - One or more indices - Mortgages and deeds of trust.

It is the duty of the register to make the entries required in §§ 10-7-202 - 10-7-204 for all instruments immediately upon their being recorded; provided, that at the discretion of the register, the register may:

(1) Index all instruments purporting to convey titles to land in one (1) or more indices, indexing them direct and reverse as provided for in §§ 10-7-201 - 10-7-206;

(2) Keep all deeds of trust or land mortgages in one (1) or more indices, indexing them direct and reverse as required by §§ 10-7-201 - 10-7-206;

(3) Keep all trust deeds or land mortgages and chattel mortgages and other instruments relating to personalty in one (1) or more indices, indexing them direct and reverse as required in §§ 10-7-201 - 10-7-206;

(4) Keep chattel mortgages, in an index, indexing them direct and reverse as required in §§ 10-7-201 - 10-7-206; or

(5) Keep a direct index of chattel mortgages in the same book or volume in which the chattel mortgages are registered or recorded.

[Acts 1925, ch. 89, § 1; Shan. Supp., § 567a4; Code 1932, § 820; T.C.A. (orig. ed.), § 15-205.]

Cross-References. Book of trust deeds, § 8-13-108.

10-7-206. Former indices may be made in addition to required indices.

The indices required to be made and kept shall be in lieu of all indices heretofore required of registers; provided, that any register may continue to make and keep such indices previously required, as the register may determine, in addition to the indices required by §§ 10-7-202 - 10-7-205.

[Acts 1925, ch. 89, § 3; Shan. Supp., § 567a6; Code 1932, § 821; T.C.A. (orig. ed.), § 15-206.]

10-7-207. Failure to make index - Forfeiture - Qui tam action.

For failing to make such index as prescribed, the register shall forfeit one hundred dollars (\$100), one half ($1/2$) to the use of the state and the other one half ($1/2$) to any person who shall sue for the same.

[Code 1858, § 455 (deriv. Acts 1839-1840, ch. 26, § 12); Shan., § 569; Code 1932, § 824; T.C.A. (orig. ed.), § 15-207.]

10-7-208. Penalty for failure to index records.

Any clerk, register, or other public officer required by law to keep any record book who willfully violates the provisions of §§ 10-7-201 - 10-7-207 commits a Class C misdemeanor, and, moreover, such person and such person's official sureties are liable to the injured party for all damage sustained by the injured party, in consequence of such failure, to be recovered before any court of competent jurisdiction.

[Acts 1871, ch. 85, § 2; Shan., § 5854; Code 1932, § 10056; modified; T.C.A. (orig. ed.), § 15-208; Acts 1989, ch. 591, § 113.]

Cross-References. Indictable and suable for nonperformance of duties, § 8-13-110.

Penalty for Class C misdemeanor, § 40-35-111.

Textbooks. Tennessee Jurisprudence, 6 Tenn. Juris., Clerks of Court, § 13; 21 Tenn. Juris., Recording Acts, § 2.

Cited: Brown v. Brown, 16 Tenn. App. 230, 64 S.W.2d 59 (1933).

NOTES TO DECISIONS

1. Negligent Failure to Index Deed - Liability.

The failure of a register of deeds, through mistake of judgment, unattended by such circumstances of gross and inexcusable negligence as implies willfulness, to index a trust deed in the names of both of its makers, does not render him liable on his official bond to the party thereby injured, under Acts 1871, ch. 65, prescribing the duties of registers with regard to indices, and making any register liable on his bond who shall "willfully violate" the statute in this respect. Maxwell v. Stuart, 99 Tenn. 407, 42 S.W. 34 (1897).

10-7-209. Cross index as to all parties in minute books and execution dockets.

The clerks of the supreme court and the clerks of all courts of record are hereby required to index and cross index each record of the minutes of the courts and the execution dockets so respectively required to be kept by them, showing in the direct index, in alphabetical order, the name or names of the plaintiffs or complainants, and against whom the suit is or was brought and, in the cross or reverse index, show the name or names of defendants, in alphabetical order, and by whom the suit is brought.

[Acts 1893, ch. 66, § 1; Shan., § 5855; Code 1932, § 10057; T.C.A. (orig. ed.), § 15-209.]

Section to Section References. This section is referred to in § 10-7-210.

Textbooks. Tennessee Jurisprudence, 6 Tenn. Juris., Clerks of Court, § 13; 21 Tenn. Juris., Recording Acts, § 12.

10-7-210. Violations of preceding section a misdemeanor.

For failure or refusal to carry out or comply with the provisions of § 10-7-209, such clerk commits a Class C misdemeanor.

[Acts 1893, ch. 66, § 3; Shan., § 5857; Code 1932, § 10059; modified; T.C.A. (orig. ed.), § 15-210; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

PART 3

PUBLIC RECORDS COMMISSION

10-7-301. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Agency" means any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law, including the legislative branch and the judicial branch;

(2) "Confidential public record" means any public record which has been designated confidential by statute and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied;

(3) "Disposition" means preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records;

(4) "Essential records" means any public records essential to the resumption or continuation of operations, to the re-creation of the legal and financial status of government in the state or to the protection and fulfillment of obligations to citizens of the state;

(5) "Permanent records" means those records which have permanent administrative, fiscal, historical or legal value;

(6) "Public record(s)" or "state record(s)" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency;

(7) "Records creation" means the recording of information on paper, printed forms, punched cards, tape, disk, or any information transmitting media. "Records creation" includes preparation of forms, reports, state publications, and correspondence;

(8) "Records disposition authorization" means the official document utilized by an agency head to request authority for the disposition of records. The public records commission shall determine and order the proper disposition of state records through the approval of records disposition authorizations;

(9) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records in order to reduce costs and improve efficiency of recordkeeping. "Records management" includes records retention schedule development, essential records protection, files management and information retrieval systems, microfilm information

systems, correspondence and word processing management, records center, forms management, analysis, and design, and reports and publications management;

(10) "Records of archival value" means any public record which may promote or contribute toward the preservation and understanding of historical, cultural, or natural resources of the state of Tennessee;

(11) "Records officer" means an individual designated by an agency head to assume responsibility for implementation of the agency's records management program;

(12) "Section" and "division" means the records management division of the department of general services;

(13) "Temporary records" means material which can be disposed of in a short period of time as being without value in documenting the functions of an agency. Temporary records will be scheduled for disposal by requesting approval from the public records commission utilizing a records disposition authorization; and

(14) "Working papers" means those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.

[Acts 1974, ch. 739, § 1; 1975, ch. 286, § 2; 1978, ch. 544, § 3; T.C.A., § 15-401; Acts 1981, ch. 364, § 3; 1984, ch. 891, § 1; 1984, ch. 947, § 1.]

Cross-References. Access, retention or disposal of confidential or archival records, §§ 10-7-504, 10-7-508.

Applicability of part, § 10-7-303.

Section to Section References. This section is referred to in §§ 10-7-303, 10-7-403, 10-7-404, 10-7-406, 10-7-413.

Attorney General Opinions. Student evaluations of professors as public records, OAG 93-67 (11/30/93).

Cited: Creative Restaurants, Inc. v. City of Memphis, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

NOTES TO DECISIONS

1. Public Records.

The proper test in determining whether material is a public record remains whether it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. Application of this test requires an examination of the totality of the circumstances. *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

Deceased's handwritten notes, confiscated at the death scene by a municipal police department in the course of a homicide investigation, were public records available for inspection by the public under this section. *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

10-7-302. Public records commission created - Duties.

A public records commission is hereby created to consist of the state treasurer, the comptroller of the treasury, the secretary of state, the director of legal services for the general assembly, and the commissioner of general services as permanent members, any of whom may designate a deputy with a vote as such person's agent to represent such person, the president of the Tennessee historical society as a nonvoting member, and, when required, one (1) temporary and nonvoting member as provided in § 10-7-303. It is the duty of the commission to determine and order proper disposition of state records. The commission shall direct the department of general services to initiate, through the records management division, by regulation or otherwise, any action it may consider necessary to accomplish more efficient control and regulation of records holdings and management in any agency. Such rules and regulations may authorize centralized microfilming for all departments, etc., or provide for other methods of reproduction for the more efficient disposition of state records. The commission shall elect its chairperson and shall meet not less often than twice annually. Members shall be reimbursed for actual and necessary expenses when attending meetings, and those members who do not receive a fixed salary from the state also shall be paid a per diem of ten dollars (\$10.00) for each day of actual meeting. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

[Acts 1974, ch. 739, § 2; 1975, ch. 286, § 2; 1976, ch. 806, § 1(58); 1977, ch. 89, § 24; T.C.A., § 15-402; Acts 1981, ch. 364, § 3; 1982, ch. 810, § 3; 1984, ch. 728, § 8.]

Compiler's Notes. The public records commission, created by this section, terminates June 30, 2000. See §§ 4-29-112, 4-29-221.

Section to Section References. This section is referred to in § 4-29-221.

10-7-303. Records management division - Creation, disposition and preservation of records - Land, legislative and judicial records.

(a) The records management division of the department of general services shall be the primary records management agency for state government, and as such shall direct the disposition of all records, including electronic processed records and computer output microfilm records.

(b) The division shall cooperate with other agencies in the creation of records, forms, etc., which will eventually be subject to retention and/or disposition scheduling.

(c) Whenever the head of any state department, commission, board or other agency has certified that records created by such person's department, either permanent, temporary or working papers, as defined in § 10-7-301, have reached the end of the retention period established prior to the generation of such records, the public records commission shall then approve or disapprove, by a majority vote, the disposition of such records in a manner specified in the rules and regulations of the commission, and any disposition schedule already in effect may be voided or amended by a majority vote at any time by the commission, upon recommendation of a member

of the commission or the head of the appropriate department, commission, board or other agency, in consultation with the staff of the records management division.

(d) No record or records shall be scheduled for destruction without the unanimous approval of the voting members of the public records commission.

(e) All records concerning private or public lands, with the exception of leases, shall be forever preserved. The microfilm records of leases required to be microfilmed prior to disposition pursuant to the provisions of § 12-2-108(c) shall be forever preserved.

(f) (1) When the development of a records management system for legislative records or the disposition of legislative records is under consideration, the speaker of the senate or such speaker's representative, the speaker of the house of representatives or such speaker's representative, and the secretary of state or the secretary's representative shall serve as temporary nonvoting members of the commission. The representatives of the speakers of the senate and house of representatives need not be members of the general assembly.

(2) When the development of a records management system for judicial records or the disposition of judicial records is under consideration, the attorney general and reporter or the attorney general's representative, and the chief justice of the supreme court or the chief justice's representative, shall serve as temporary nonvoting members of the commission.

(g) This part applies to legislative and judicial records.

[Acts 1974, ch. 739, § 3; 1975, ch. 286, § 2; 1977, ch. 38, § 2; T.C.A., § 15-403; Acts 1981, ch. 364, § 3; 1984, ch. 891, § 2; 1991, ch. 498, §§ 4, 8.]

Section to Section References. This section is referred to in §§ 10-7-302, 12-2-108.

10-7-304. Records officer, systems or records analyst.

The head of each department, commission, board or agency shall designate a records officer, systems analyst, or records analyst, etc., who shall be an employee at the administrative level and who shall be instructed to cooperate with the staff of the records management section and the public records commission in carrying out the purposes of this chapter. It is the duty of the records officer to appear before the public records commission for the purpose of presenting on behalf of such record officer's department, commission, board or agency requests for disposition of records.

[Acts 1974, ch. 739, § 4; T.C.A., § 15-404.]

10-7-305. Administrative officer and secretary - Duties.

The commissioner of general services shall be the administrative officer and secretary of the public records commission and act on its behalf and by its direction to make and enter into contracts and agreements with other departments, agencies, boards and commissions of state government as the commission may consider necessary, expedient or incidental to the performance of its duties under this chapter.

[Acts 1974, ch. 739, § 5; 1975, ch. 286, § 2; T.C.A., § 15-405; Acts 1981, ch. 364, § 3.]

10-7-306. Rules and regulations of commission.

(a) The commission shall issue rules and regulations which shall include such procedures as may be necessary to carry out the purposes of this chapter. Such rules and regulations shall provide, but not be limited to:

(1) Procedures for the adoption of any record to be created by any department, board, commission or agency;

(2) Standards and procedures for the reproduction of records for security or for disposal of original records;

(3) Procedures for compiling and submitting to the division lists and schedules or records proposed for disposition;

(4) Procedures for the physical destruction or other disposition of records.

(b) All rules and regulations must be approved by a majority of the voting members of the commission. The commissioner of general services as the administrative officer and secretary of the commission shall sign all rules and regulations on behalf of the commission.

(c) The rules and regulations shall be issued and promulgated in accordance with title 4. The commission need not formally meet to act under this section, but may adopt any rule, regulation, procedure or disposal with the written approval of all voting members.

[Acts 1974, ch. 739, § 6; 1975, ch. 286, § 2; T.C.A., § 15-406; Acts 1981, ch. 364, § 3.]

10-7-307. Title to and destruction of records transferred to state archives.

Title to any record transferred to the state archives is vested in the state library and archives. The state librarian and archivist may destroy originals of such records if such records have been microfilmed or converted to microform media of such quality which shall meet the minimum standards of the United States government.

[Acts 1978, ch. 544, § 4; T.C.A., § 15-407; Acts 1991, ch. 362, § 1.]

10-7-308. Title to records transferred to section.

Title to any record transferred to the section (records center) shall remain in the agency transferring such records to a state records center.

[Acts 1978, ch. 544, § 4; T.C.A., § 15-408.]

PART 4

COUNTY PUBLIC RECORDS COMMISSION

10-7-401. County public records commission created - Membership **[Amended effective July 1, 1999. See the Compiler's Notes].**

In order to provide for the orderly disposition of public records created by agencies of county government, the county legislative body shall create within the county a county public records commission, composed of six (6) members. The county executive shall appoint three (3) members and the county legislative body shall confirm each appointee. Of the three (3) appointees, one (1) shall be a member of the county legislative body, one (1) shall be a judge of one of the courts of record which holds court in the county and one (1) shall be a genealogist. The county clerk, county register and the county historian shall be ex officio members of the commission. Each elected member of the commission shall hold office during the term for which the member was elected to office. If a vacancy occurs in one (1) of the appointed positions, the county executive shall appoint a person in the same manner as the original appointment.

[Acts 1959, ch. 253, § 1; 1965, ch. 316, § 1; 1968, ch. 507, § 1; 1977, ch. 78, § 1; 1977, ch. 486, § 1; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A., § 15-501; Acts 1987, ch. 195, § 1; 1994, ch. 884, § 1; 1998, ch. 793, §§ 3, 4.]

Compiler's Notes. Acts 1998, ch. 793, §§ 3, 4 provided that the amendments by that act take effect July 1, 1999. The amendments by that act are not set out above; effective July 1, 1999, this section will read "In order to provide for the orderly disposition of public records created by agencies of county government, the county legislative body shall create within the county a county public records commission, composed of at least six (6) members. The county executive shall appoint three (3) members and the county legislative body shall confirm each appointee. Of the three (3) appointees, one (1) shall be a member of the county legislative body, one (1) shall be a judge of one of the courts of record which holds court in the county and one (1) shall be a genealogist. The county clerk, county register and the county historian shall be ex officio members of the commission. In counties having a duly appointed county archivist, that person shall also serve as an ex officio member of the commission. Each elected member of the commission shall hold office during the term for which the member was elected to office. If a vacancy occurs in one (1) of the appointed positions, the county executive shall appoint a person in the same manner as the original appointment."

Amendments. The 1998 amendment, effective July 1, 1999, substituted "composed of at least six (6) members" for "composed of six (6) members" in the first sentence; and added the following sentence between the fourth and fifth sentences: "In counties having a duly appointed county archivist, that person shall also serve as an ex officio member of the commission."

Effective Dates. Acts 1998, ch. 793, § 5. July 1, 1999.

Section to Section References. This part is referred to in § 8-13-108.

10-7-402. Organization of commission - Compensation - Meetings.

The county records commission shall elect a chairperson and a secretary and shall keep and preserve minutes of all its proceedings and transactions. Members of the commission shall receive no compensation except that any member who does not receive a fixed annual salary from the state or the county may be paid a per diem of twenty-five dollars (\$25.00) for each day of actual meeting. Members may be reimbursed for actual necessary expenses incurred in attendance upon their duties. The commission shall meet not less than twice annually.

[Acts 1959, ch. 253, § 9; T.C.A., § 15-502.]

10-7-403. "Public records" defined.

Public records within the county shall be construed to mean:

(1) All documents, papers, records, books, and books of account in all county offices, including, but not limited to, the county clerk, the county register, the county trustee, the sheriff, the county assessor, the county executive and county commissioners, if any;

(2) The pleadings, documents, and other papers filed with the clerks of all courts including the courts of record, general sessions courts, and former courts of justices of the peace, and the minute books and other records of these courts;

(3) The minutes and records of the county legislative body; and

(4) All documents, papers, records, books of account and minutes of the governing body of any municipal corporation within the county, or of any office or department of such municipal corporation within the definition of "permanent records," "essential records" and/or "records of archival value" as defined in § 10-7-301, constitute "public records" of such municipal corporation. All documents, papers or records of any municipal corporation within the county or of any office or department of such municipal corporation which constitute "temporary records" and/or "working papers" within the definition set forth in § 10-7-301(13) and (14) constitute "public records" of the municipality.

[Acts 1959, ch. 253, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 16, 22, 36; T.C.A., § 15-503; Acts 1991, ch. 369, § 1; 1994, ch. 884, § 2.]

Compiler's Notes. Acts 1994, ch. 884, § 10 provided that nothing in the amendment by that act shall be construed to permit or authorize a county public records commission, a court clerk, a county or municipal official or any other person from destroying or authorizing the destruction of any original process in a civil action or criminal proceeding.

Section to Section References. This section is referred to in §§ 10-7-404, 10-7-406, 10-7-412, 10-7-413.

10-7-404. Destruction of public records authorized - Conditions prerequisite to destruction - Records manual [Amended effective July 1, 1999. See the Compiler's Notes].

(a) The county public records commission has the right to authorize the destruction of any and all public records as defined in § 10-7-403, which are required by law to be retained, when such records have been photocopied, photostated, filmed, microfilmed,

or preserved by microphotographic process, as hereinafter provided; provided, that no record required by law to be permanently retained shall be destroyed without a majority vote of the commission. A county officer or judge of a court of record shall be entitled to prevent the destruction of documents, minutes, or records in the office or court, as appropriate. The requirement to photocopy, photostat, film, microfilm, or preserve by microphotographic process prior to destruction in accordance with this section shall not be required of "temporary records" and/or "working papers" as defined in §§ 10-7-301 and 10-7-403. The commission does not have the authority to authorize the destruction of any financial or other record which is determined by the comptroller of the treasury to be required for audit purposes until the pertinent audit has been completed. After the audit, disposition will be determined pursuant to procedures developed by the comptroller; provided, that the commission shall not have the authority to authorize the destruction of any other record which is otherwise required by law to be retained.

(b) (1) The county technical assistance service, a unit of the University of Tennessee's Institute for Public Service, is authorized to compile and print manuals, in cooperation with the state library and archives, and the division of records management, department of general services, which shall be used as guides by all county public records commissions, county offices, and judges of courts of record, setting out which records shall or may be destroyed, and those which should not be destroyed, after photographing, photostating, filming, microfilming, or other microphotographic process. Until these manuals are available, the Tennessee county records manual compiled by the Tennessee state library and archives shall be used.

(2) The municipal technical advisory service, a unit of the Institute for Public Service of the University of Tennessee, is authorized to compile and print, in cooperation with the state library and archives, records retention manuals which shall be used as guides by municipal officials in establishing retention schedules for all records created by municipal governments in the state.

(c) Nothing in § 10-7-401, § 10-7-413(c), subdivision (b)(2) of this section, or the amendment to § 10-7-403(4) by Acts 1994, ch. 884, shall be construed to permit or authorize a county public records commission, a court clerk, a county or municipal official or any other person to destroy or authorize the destruction of any original process in a civil action or criminal proceeding.

(d) (1) [Effective July 1, 1999.] In addition to the foregoing procedure for the destruction of original public records, the county public records commission may, upon the request of any office or department head of county government having custody of public records, including court records, authorize the destruction or transfer of original public records which have been reproduced onto computer or removable computer storage media, including CD-ROM disks, in accordance with the provisions of § 10-7-121 and this subsection. The secretary of state, as supervisor of the state library and archives, shall promulgate regulations regarding the approved technology, standards and procedures for reproducing public records under this subsection, which shall be followed by county officers, department heads and the county public records commission. Additionally, the county public records commission shall not order the destruction of such original public records which have been reproduced pursuant to this subsection unless the county public records commission has complied with the provisions of §§ 10-7-413 and 10-7-414. Prior to any order of destruction or transfer of any original public records pursuant to this subsection, the officer or department head

having custody of such records shall advertise in a newspaper of general circulation in the county, and in counties having a population in excess of two hundred thousand (200,000) according to the 1990 federal census or any subsequent federal census, also in a weekly newspaper, that certain records of the office or department, to be described in the advertisement by title and year, have been electronically stored, reproduced and protected and that the office or department has applied for permission to no longer retain such originals. The authority to destroy original public records granted by this subsection is not exclusive and shall not prevent the destruction of original public records where otherwise authorized.

(2) If the county public records commission fails to act upon a request of a county officer or department head having custody of public records to order the destruction or transfer of original public records after the same have been reproduced in accordance with this subsection within six (6) months of receiving such a request in writing, then the county officer or department head may forward the request to the state library and archives, whereupon the state librarian and archivist, or designated representative, shall have authority to authorize the destruction or transfer of the public records instead of the county public records commission. Failure of the state library and archives to respond to the records disposal request of the county officer or department head within nine (9) months of receiving such a request shall authorize the county officer or department head to destroy the original public records which have been reproduced in accordance with any regulations on this subject promulgated by the secretary of state.

[Acts 1959, ch. 253, § 3; 1963, ch. 301, §§ 1, 2; 1965, ch. 316, § 2; 1967, ch. 104, § 1; 1977, ch. 486, § 2; T.C.A., § 15-504; Acts 1991, ch. 369, § 2; 1994, ch. 884, §§ 3, 10; 1998, ch. 793, § 1.]

Compiler's Notes. Acts 1998, ch. 793, § 5 provided that the amendment by that act takes effect July 1, 1999. The text set out above reflects the addition of (d) by that act. Prior to July 1, 1999, this section contains no (d).

Amendments. The 1998 amendment, effective July 1, 1999, added (d).

Effective Dates. Acts 1998, ch. 793, § 5. July 1, 1999.

Cross-References. Authorization of destruction of public records of terminated mortgages, deeds of trust, and chattel mortgages, § 10-7-412.

Section to Section References. This section is referred to in §§ 10-7-406, 10-7-503.

10-7-405. [Repealed.]

Compiler's Notes. Former § 10-7-405 (Acts 1959, ch. 253, § 4; T.C.A., § 15-505), concerning the conditions for the destruction of municipal records, was repealed by Acts 1994, ch. 884, § 4.

10-7-406. Original records photographed in duplicate before destruction - Stored for safekeeping - Accessible to public.

(a) (1) When the county public records commission, with the consent and concurrence of the officers and bodies, if any, as prescribed in §§ 10-7-404 and 10-7-405 [repealed], shall decide to destroy the originals of any records required by law to be permanently kept, the commission shall cause the records to be photographed,

microphotographed, filmed or microfilmed in duplicate. This duplication process shall result in permanent records of a quality at least as good as is prescribed by the minimum standards of quality for permanent photographic records made and established by the bureau of standards of the United States government. If a marginal release or other information on an old record has failed or has been obliterated to a degree that it is impossible to photograph, the same may be verified on the margin by the register before microfilming. One (1) copy of such reproduction shall be stored for safekeeping in a place selected by the commission and concurred in by the county legislative body.

(2) Such place shall be in the state if proper facilities are available, but, if not, then in a place outside the state.

(3) Such location shall be selected with a view of protection of the records from fire and all other hazards. The other copy of each document shall be kept in an office in the county accessible to the public and to the several county officers and the county clerks, together with the proper equipment for using, examining, exhibiting, projecting and enlarging the same wherever required and requested by the public during reasonable office hours. The records of each office may be kept in that office, or, if the commission so determines, all the reproduced records may be kept in one (1) central records office.

(b) Any public record defined as "temporary record" and/or "working papers" as defined in §§ 10-7-301 and 10-7-403 may be destroyed in accordance with the rules and regulations adopted by the commission without retaining the originals of such records.

(c) The purpose and intent of this chapter is to provide for the original recording of any and all instruments by photograph, photostat, film, microfilm or other microphotographic process. If any laws or part of laws as set forth in this chapter are in conflict with such purpose, such laws or part of laws to that extent are hereby repealed.

[Acts 1959, ch. 253, § 5; 1963, ch. 203, § 1; 1971, ch. 154, § 1; 1977, ch. 486, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 22, 36; T.C.A., § 15-506; Acts 1991, ch. 369, § 3.]

Compiler's Notes. Section 10-7-405, referred to in this section, was repealed by Acts 1994, ch. 884, § 4.

COLLATERAL REFERENCES

Requirement of notice as condition for admission in evidence of summary of voluminous records. 80 A.L.R.3d 405.

10-7-407. [Repealed.]

Compiler's Notes. Former § 10-7-407 (Acts 1959, ch. 253, § 6; T.C.A., § 15-507), concerning the cost of storage and reproduction of municipal records borne by municipality, was repealed by Acts 1994, ch. 884, § 5.

10-7-408. Appropriation of funds.

The county legislative body of any county which shall create a county records commission has the power to appropriate such funds as may be required for the carrying out of the purposes of this chapter including, but not limited to, the purchase or leasing of equipment, the equipping of an office and the payment of the expenses thereof, the furnishing of secretaries and clerical help and the employment of expert advice and assistance.

[Acts 1959, ch. 253, § 7; 1968, ch. 507, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A., § 15-508.]

10-7-409. Charges for copies of records authorized.

The county records commission has the power to establish charges for and to collect such charges for making and furnishing or enlarging copies of records.

[Acts 1959, ch. 253, § 8; T.C.A., § 15-509.]

10-7-410. Reproductions admissible as evidence.

Any reproduction of any record herein authorized to be made shall be deemed to be the original of the record so reproduced for all purposes, and any facsimile of such record duly certified to be such by the officer or clerk charged by law with the custody thereof shall be admissible as evidence in any court or proceeding in this state and shall have the same force and effect as would the original of the document or a certified copy thereof if made from the original record, document or paper.

[Acts 1959, ch. 253, § 10; T.C.A., § 15-510.]

10-7-411. Rules and regulations of commission.

(a) The county records commission has the authority to promulgate reasonable rules and regulations pertaining to the making, filing, storage, exhibiting and copying of the reproductions of records authorized by this chapter.

(b) Such rules and regulations shall provide, but not be limited to, the following:

(1) Standards and procedures for the reproduction of records for security or for disposal of original records in all county offices;

(2) Procedures for compiling and submitting to all county offices lists, schedules or time tables for disposition of particular records within the county; and

(3) Procedures for the physical destruction or other disposition of public records.

(c) All rules and regulations shall be approved by a majority of the voting members of the county public records commission. The chair of the commission shall sign all rules and regulations on behalf of the commission.

[Acts 1959, ch. 253, § 11; T.C.A., § 15-511; Acts 1991, ch. 369, § 4; 1994, ch. 884, §§ 6, 7.]

10-7-412. Destruction of public records authorized - Terminated mortgages, deeds of trust, chattel mortgages.

The county records commission has the right to authorize the destruction of any and all public records as defined in § 10-7-403 pertaining to all mortgages and deeds of trust on personal property and chattel mortgages, the terms of which have expired or the conditions of which have been complied with in their entirety; provided, that no such document or record of the county register's office shall be destroyed without the consent of the county register; and provided further, that no such mortgages and deeds of trust on personal property and chattel mortgages shall be destroyed without a majority vote of the county records commission.

[Acts 1963, ch. 304, § 1; 1967, ch. 105, § 1; 1977, ch. 486, § 3; T.C.A., § 15-512.]

Cross-References. Destruction of public records, § 10-7-404.

10-7-413. Preservation of records of permanent value [Amended effective July 1, 1999. See the Compiler's Notes].

(a) Before any records other than "temporary records" and/or "working papers" as defined in §§ 10-7-301 and 10-7-403 are destroyed, after being so authorized by the county public records commission, ninety (90) days' notice shall be given to the state librarian and archivist, whereupon the state archivist or the archivist's representative shall examine the records approved for disposal and shall take into the archivist's possession, for preservation in the state library and archives, any records the archivist believes to be of value for permanent preservation.

(b) The county public records commission has the right to authorize the lamination of certain original records such as wills, will books, deeds, deed books, marriage licenses, marriage bonds, marriage registers, and other records which are to be permanently preserved.

(c) Responsibility for providing trained staff and appropriate equipment necessary to produce and store microfilm reproductions of official, permanent value bound volume records created by the various county and municipal governments of the state is hereby vested in the state library and archives. To implement this security microfilming program, the state librarian and archivist is authorized to develop a priority listing of essential records based on retention schedules developed by the county technical assistance service and the municipal technical advisory service. This priority listing of essential records may be revised from time to time to accommodate critical needs in individual counties or municipalities or to reflect changes in retention schedules. The camera negative of the microfilmed records shall be stored in the security vault at the state library and archives and duplicate rolls of these microfilmed records shall be made available to county and municipal governments on a cost basis.

[Acts 1971, ch. 242, § 1; 1977, ch. 486, § 2; T.C.A., § 15-513; Acts 1991, ch. 369, § 5; 1994, ch. 884, § 8; 1998, ch. 793, § 2.]

Compiler's Notes. Acts 1998, ch. 793, § 2 amended (a), effective July 1, 1999. The amendment to (a) is not set out above; effective July 1, 1999, (a) will read "Before any records other than "temporary records" and/or "working papers" as defined in §§ 10-7-301 and 10-7-403 are destroyed, after being so authorized by the county public records

commission, ninety (90) days' notice shall be given to the state librarian and archivist, whereupon the state archivist or the archivist's representative shall examine the records approved for disposal and shall take into the archivist's possession, for preservation in the state library and archives, any records the archivist believes to be of value for permanent preservation. If a county public records commission does not receive a response from the state library and archives within nine (9) months of submitting the notice required under this subsection, the county public records commission may proceed with the destruction of the records which were the subject of the notice."

Amendments. The 1998 amendment, effective July 1, 1999, adds a second sentence to (a), which will read: "If a county public records commission does not receive a response from the state library and archives within nine (9) months of submitting the notice required under this subsection, the county public records commission may proceed with the destruction of the records which were the subject of the notice."

Effective Dates. Acts 1998, ch. 793, § 5. July 1, 1999.

Section to Section References. This section is referred to in §§ 10-7-404, 10-7-414.

10-7-414. Transfer of records to institutions or to state library and archives to be held for historical purposes - Funds for transfer and maintenance of records.

(a) The county public records commission, after authorizing destruction of any public records and after examination of these records by the state librarian and archivist or the state librarian and archivist's representative in accordance with § 10-7-413, may authorize, by majority vote, to place any document or record which would otherwise be destroyed in the custody of a local or regional public library, a local, regional, or state college library, or the county or regional historical society, to be held for historical purposes.

(b) After custody of any document or record is given to any designated institution, the county public records commission, upon majority vote, may transfer custody of any document or record to another designated institution after giving one (1) month's notice to the institution originally designated. Further, upon request of the state librarian and archivist, the county public records commission may cause the transfer of any of the documents or records from a designated institution to the state library and archives.

(c) The county public records commission is authorized to expend funds appropriated by the governing body of the county for the purpose of transferring these documents and records, and may also expend funds so appropriated for maintenance of these documents and records at any of the designated institutions.

[Acts 1977, ch. 486, § 4; T.C.A., § 15-514.]

Section to Section References. This section is referred to in § 10-7-404.

PART 5 MISCELLANEOUS PROVISIONS

10-7-501. Reproduction of state records on film.

The head of any department, commission, board, or agency of the state government may cause any or all records kept by such head or it to be photographed, microphotographed or reproduced on film; provided, that the microfilm project has been evaluated and approved by the records management division of the department of general services. Such photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards and the device used to reproduce such records on film shall be one which accurately reproduces the original thereof in all details.

[Acts 1947, ch. 26, § 1; C. Supp. 1950, § 255.93 (Williams, § 1034.80); Acts 1977, ch. 38, § 1; T.C.A. (orig. ed.), § 15-301; Acts 1981, ch. 364, § 3.]

Section to Section References. This part is referred to in §§ 3-12-106, 56-47-112, 68-211-814, 68-212-306, 68-212-311.

Law Reviews. Updating Tennessee's Public Records Law (Douglas Pierce), 24 No. 5 Tenn. B.J. 24 (1988).

Cited: Creative Restaurants, Inc. v. City of Memphis, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

NOTES TO DECISIONS

1. Public Inspection.

See note under heading "Broad Construction," § 10-7-503, Notes to Decisions. Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs., 621 S.W.2d 763 (Tenn. Ct. App. 1981).

COLLATERAL REFERENCES

Photostatic or other method of recording instrument. 57 A.L.R. 159.

10-7-502. Photographic copy deemed original record.

(a) Any photograph, microphotograph or photographic film of any state, county, or municipal public record are deemed to be original records for all purposes, including introduction into evidence in all courts or administrative agencies.

(b) A transcript, exemplification, or certified copy thereof shall, for all purposes recited therein, be deemed to be a transcript, exemplification or certified copy of the original.

[Acts 1947, ch. 26, § 3; C. Supp. 1950, § 255.93 (Williams, § 1034.82); T.C.A. (orig. ed.), § 15-303; Acts 1991, ch. 369, § 6.]

10-7-503. Records open to public inspection - Exceptions.

(a) All state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(b) The head of a governmental entity may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to maintain the confidentiality of records concerning adoption proceedings or records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program.

(c) (1) All law enforcement personnel records shall be open for inspection as provided in subsection (a); however, whenever the personnel records of a law enforcement officer are inspected as provided in subsection (a), the custodian shall make a record of such inspection and provide notice, within three (3) days from the date of the inspection, to the officer whose personnel records have been inspected:

(A) That such inspection has taken place;

(B) The name, address and telephone number of the person making such inspection;

(C) For whom the inspection was made; and

(D) The date of such inspection.

(2) Any person making an inspection of such records shall provide such person's name, address, business telephone number, home telephone number, driver license number or other appropriate identification prior to inspecting such records.

(d) (1) All records of any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i) shall be open for inspection as provided in subsection (a); provided, that any such organization shall not be subject to the requirements of this subsection so long as it complies with the following requirements:

(A) The board of directors of the organization shall cause an annual audit to be made of the financial affairs of the organization, including all receipts from every source and every expenditure or disbursement of the money of the organization, made by a disinterested person skilled in such work. Each audit shall cover the period extending back to the date of the last preceding audit and it shall be paid out of the funds of the organization;

(B) Each audit shall be conducted in accordance with the standards established by the comptroller of the treasury pursuant to § 4-3-304(9) for local governments;

(C) The comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted governmental auditing standards, and determining whether the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury;

(D) The audits may be prepared by a certified public accountant, a public accountant or by the department of audit. If the governing body of the municipality fails or refuses to have the audit prepared, the comptroller of the treasury may appoint a certified public accountant or public accountant or direct the department to prepare the audit. The cost of such audit shall be paid by the organization;

(E) Each such audit shall be completed as soon as practicable after the end of the fiscal year of the organization. One (1) copy of each audit shall be furnished to the organization and one (1) copy shall be filed with the comptroller of the treasury. The copy of the comptroller of the treasury shall be available for public inspection. Copies of each audit shall also be made available to the press; and

(F) In addition to any other information required by the comptroller of the treasury, each audit shall also contain:

(i) A listing, by name of the recipient, of all compensation, fees or other remuneration paid by the organization during the audit year to, or accrued on behalf of, the organization's directors and officers;

(ii) A listing, by name of recipient, of all compensation and any other remuneration paid by the organization during the audit year to, or accrued on behalf of, any employee of the organization who receives more than twenty-five thousand dollars (\$25,000) in remuneration for such year;

(iii) A listing, by name of beneficiary, of any deferred compensation, salary continuation, retirement or other fringe benefit plan or program (excluding qualified health and life insurance plans available to all employees of the organization on a nondiscriminatory basis) established or maintained by the organization for the benefit of any of the organization's directors, officers or employees, and the amount of any funds paid or accrued to such plan or program during the audit year; and

(iv) A listing, by name of recipient, of all fees paid by the organization during the audit year to any contractor, professional advisor or other personal services provider, which exceeds two thousand five hundred dollars (\$2,500) for such year. Such listing shall also include a statement as to the general effect of each contract, but not the amount paid or payable thereunder.

The provisions of this subsection shall not apply to any association or nonprofit corporation described in § 8-44-102(b)(1)(E)(i), that employs no more than two (2) full-time staff members.

(2) The provisions of this subsection (d) shall not apply to any association, organization or corporation that was exempt from federal income taxation under the provisions of § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) as of January 1, 1998, and which makes available to the public its federal return of

organization exempt from income tax (Form 990) in accordance with the Internal Revenue Code and related regulations.

[Acts 1957, ch. 285, § 1; T.C.A., § 15-304; Acts 1981, ch. 376, § 1; 1984, ch. 929, §§ 1, 3; 1991, ch. 369, § 7; 1993, ch. 475, § 1; 1998, ch. 1102, §§ 2, 4.]

Amendments. The 1998 amendment added (d).

Effective Dates. Acts 1998, ch. 1102, § 6. May 19, 1998.

Cross-References. Confidentiality of information in legislative computer system, § 3-10-108.

Public inspections and copying of agency rules, final orders and decisions, § 4-5-218.

Section to Section References. Sections 10-7-503 - 10-7-506 are referred to in § 8-30-307.

This section is referred to in §§ 3-10-108, 9-4-518, 9-8-307, 10-7-504, 10-7-505, 10-8-102, 17-5-304, 49-6-6001, 68-11-909.

Textbooks. Tennessee Jurisprudence, 14 Tenn. Juris., Hospitals, § 2.

Law Reviews. Updating Tennessee's Public Records Law (Douglas Pierce), 24 No. 5 Tenn. B.J. 24 (1988).

Attorney General Opinions. Pre-1951 adoption records and birth certificates, OAG 94-015 (2/4/94).

Status of "911 tapes" under Public Records Act, OAG 93-65 (11/29/93).

Student evaluations of professors as public records, OAG 93-67 (11/30/93).

Cited: *Abernathy v. Whitley*, 838 S.W.2d 211 (Tenn. Ct. App. 1992); *State v. Baker*, 842 S.W.2d 261 (Tenn. Crim. App. 1992); *James Cable Partners, L.P. v. City of Jamestown*, 822 F. Supp. 476 (M.D. Tenn. 1993); *Thompson v. Reynolds*, 858 S.W.2d 328 (Tenn. Ct. App. 1993); *Seaton v. Johnson*, 898 S.W.2d 232 (Tenn. Ct. App. 1995).

NOTES TO DECISIONS

Analysis

1. Public Records.
2. Limits on Access.
- 2.5. - Protective Orders.
3. Applications for School Superintendent.
4. Broad Construction.
5. Police Records.
6. Public Hospital Records.
7. Private Hospital Records.
8. Records Unavailable.
9. Records Available.

1. Public Records.

"Records," as defined in § 10-7-101, does not govern what is to be considered a record under this section. *Creative Restaurants, Inc. v. City of Memphis*, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

Transcripts of depositions taken by attorney for city and county in bankruptcy proceedings were "records" subject to public inspection under Public Records Act. *Memphis Publishing Co. v. City of Memphis*, 871 S.W.2d 681 (Tenn. 1994).

Transcripts of depositions taken by attorney for city and county in bankruptcy proceedings were not required to be filed in bankruptcy court before public had right to inspect them. *Memphis Publishing Co. v. City of Memphis*, 871 S.W.2d 681 (Tenn. 1994).

2. Limits on Access.

Section 10-7-505 does not limit the scope of this section, nor does it give the courts leeway to exempt records from public inspection. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

2.5. - Protective Orders.

Records sealed by protective orders pursuant to the Rules of Civil Procedure are not subject to disclosure under this section. *State v. Phillips*, 924 S.W.2d 662 (Tenn. 1996).

3. Applications for School Superintendent.

Applications of those seeking the position of school superintendent are records which are open to public inspection. *Board of Educ. v. Memphis Publishing Co.*, 585 S.W.2d 629 (Tenn. Ct. App. 1979).

4. Broad Construction.

This section should be construed to be broad enough to encompass § 10-7-501. *Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs.*, 621 S.W.2d 763 (Tenn. Ct. App. 1981).

5. Police Records.

A closed investigative file of a municipal police department is available for inspection by the media and the public. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

Deceased's handwritten notes, confiscated at the death scene by a municipal police department in the course of a homicide investigation, were public records available for inspection by the public under this section. *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

The evidence test is not the appropriate test to be applied in determining whether material taken into custody by a police department has been received in connection with transacting official business. *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

The proper test in determining whether material is a public record remains whether it was made or received pursuant to law or ordinance or in connection with the transaction of official

business by any governmental agency. Application of this test requires an examination of the totality of the circumstances. *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

6. Public Hospital Records.

Records of public hospital which claimed governmental immunity in tort actions and met all of the criteria necessary to be considered an arm of the state carrying on a governmental function were encompassed within the provisions of this section and subject to public inspection. *Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs.*, 621 S.W.2d 763 (Tenn. Ct. App. 1981).

7. Private Hospital Records.

Private, not-for-profit hospital was not a governmental entity and thus its records concerning employees were not subject to public inspection under this section. *Memphis Publishing Co. v. Shelby County Health Care Corp.*, 799 S.W.2d 225 (Tenn. Ct. App. 1990).

8. Records Unavailable.

Records of the investigation into the death of an inmate of a state correctional facility are not available for inspection under this section where the records are relevant to a pending criminal prosecution. *Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1987).

9. Records Available.

Subleases of city-owned property, in the possession of an assistant city attorney, or in the possession of a corporation-for-profit acting as a leasing agent for the city, qualify as "public records" and are subject to inspection pursuant to this section, and copying pursuant to § 10-7-506. *Creative Restaurants, Inc. v. City of Memphis*, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

10-7-504. Confidential records.

(a) (1) The medical records of patients in state, county and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public.

(2) All investigative records of the Tennessee bureau of investigation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the drivers' license issuance division of the department of safety relating to bogus drivers' licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; however, such investigative records of the Tennessee bureau of investigation shall be

open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor. The bureau, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including, but not restricted to, national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(5) (A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the office of the attorney general and reporter are not subject to inspection or copying in the office of the attorney general and reporter; provided, that such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly, if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision shall be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the rules of civil procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of children's services shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. The release of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(9) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for inspection by members of the public.

(10) (A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(10), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information;

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University;

(11) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee board of regents or the University of Tennessee, when the owner or donor of such records wishes to place restrictions on access to the records shall be treated as confidential and shall not be open for inspection by members of the public. This exemption shall not apply to any records prepared or received in the course of the operation of state or local governments;

(12) Personal information contained in motor vehicle records shall be treated as confidential and shall only be open for inspection in accordance with the provisions of title 55, chapter 25;

(13) (A) All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional, are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless all parties waive such privilege. In order for such privilege to apply, the incident counseling and/or therapy shall be conducted by a qualified mental health professional as defined in § 33-10-301;

(B) For the purposes of this section, "group setting" means that more than one (1) person is present with the mental health professional when the incident counseling and/or therapy is being conducted;

(C) All memoranda, work notes or products, case files and communications pursuant to this section shall not be construed to be public records pursuant to title 10, chapter 7;

(D) Nothing in this section shall be construed as limiting a licensed professional's obligation to report suspected child abuse or limiting such professional's duty to warn about dangerous individuals as provided under title 33, chapter 10, part 3, or other provisions relevant to the mental health professional's license;

(E) Nothing in this section shall be construed as limiting the ability of a patient or client, or such person's survivor, to discover under the rules of civil procedure or to admit in evidence under the rules of evidence any memoranda, work notes or products, case files and communications which are privileged by this section and which are relevant to a malpractice action or any other action by a patient against a mental health professional arising out of the professional relationship. In such an action against a mental health professional, neither shall anything in this section be construed as limiting the ability of the mental health professional to so discover or admit in evidence such memoranda, work notes or products, case files and communications; and

(14) All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract shall be treated as confidential and shall not be open for inspection by members of the public.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any provision of the law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or mental retardation. The provisions of this section do not apply to a record concerning an adoption or a record maintained by the office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years old on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years from the creation date of such records.

(d) Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program shall be confidential; provided, that any such records are maintained

separately from personnel and other records regarding such employee that are open for inspection. For purposes of this subsection, "employee assistance program" means any program that provides counseling, problem identification, intervention, assessment, or referral for appropriate diagnosis and treatment, and follow-up services to assist employees of such state or local governmental entity who are impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance.

(e) Unpublished telephone numbers in the possession of emergency communications districts created pursuant to title 7, chapter 86, shall be treated as confidential and shall not be open for inspection by members of the public until such time as any provision of the service contract between the telephone service provider and the consumer providing otherwise is effectuated; provided, that addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of emergency communications districts created pursuant to title 7, chapter 86, shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county.

[Acts 1957, ch. 285, § 2; 1970, ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976, ch. 552, § 1; 1976, ch. 777, § 1; 1977, ch. 152, § 3; 1978, ch. 544, § 1; 1978, ch. 890, § 2; T.C.A., § 15-305; Acts 1983, ch. 211, § 1; 1984, ch. 947, § 2; 1985, ch. 421, §§ 1-4; 1985 (1st E.S.), ch. 5, § 29; 1987, ch. 118, § 2; 1987, ch. 337, § 20; 1988, ch. 783, § 1; 1988, ch. 894, § 2; 1989, ch. 75, § 1; 1989, ch. 278, § 27; 1990, ch. 888, § 1; 1991, ch. 129, § 1; 1992, ch. 823, § 1; 1996, ch. 724, § 1; 1996, ch. 745, § 16; 1996, ch. 1079, § 29; 1997, ch. 84, § 1; 1997, ch. 290, § 1; 1997, ch. 292, § 1; 1998, ch. 1075, § 1.]

Amendments. The 1997 amendment by ch. 84 added (e).

The 1997 amendment by ch. 290 added (a)(13).

The 1997 amendment by ch. 292 added (a)(14).

The 1998 amendment added the proviso at the end of (e).

Effective Dates. Acts 1997, ch. 84, § 2. April 11, 1997.

Acts 1997, ch. 290, § 2. May 28, 1997.

Acts 1997, ch. 292, § 3. May 28, 1997.

Acts 1998, ch. 1075, § 2. May 19, 1998.

Cross-References. Access, retention or disposal of confidential or archival records, § 10-7-508.

Accident reports, confidentiality, § 55-10-114.

Adoption records, § 36-1-125.

Adult Protection Act, confidentiality, § 71-6-118.

Agency documents and records, deletion of confidential portions, § 4-5-218.

Aid to families with dependent children, confidentiality, § 71-3-119.

Atomic energy and nuclear materials, confidentiality of proprietary information, § 68-202-217.

Banks and financial institutions, records, §§ 45-2-1603, 45-2-1713, 45-7-216, 45-7-225.

Banks, change of control, confidentiality of commissioner of financial institutions' information, § 45-2-103.

Bidding, contracts and purchases generally, title 12, ch. 3, part 2.

Board of veterinary medical examiners, confidentiality, § 63-12-110.

Cafeteria benefit plans, government employees, confidentiality of medical records, § 8-25-502.

Cafeteria compensation plan services for state employees, confidentiality of medical records, § 8-25-502.

Chancery court records and papers, insurance company delinquency proceedings, § 56-9-201.

Child abuse, confidentiality of reports of harm and identity of reporter, § 37-1-409.

Child sexual abuse, confidentiality of records, § 37-1-612.

Civil service tests and answers, confidentiality, § 8-30-303.

Claims against state, confidentiality of records, § 9-8-307.

Commissioner of commerce and insurance, records and proceedings relating to supervision of insurers, § 56-9-504.

Commissioner of correction, restricting access to records, § 4-6-140.

Commissioner of revenue, confidentiality of inheritance tax records, § 67-8-404.

Commissioner of revenue, confidentiality of transfer tax records, § 67-8-109.

Communications between psychiatrist and patient, confidentiality, § 24-1-207.

Community grant agency employees, improper actions, confidentiality of information received on comptroller's tollfree hotline, § 8-4-404.

Complaints of judicial disability, confidentiality, § 17-5-303.

Confidentiality of abortion records and reports, § 39-15-203.

Confidentiality of adoption or federal records, § 10-7-503.

Confidentiality of bank and financial institution information, §§ 45-2-1603, 45-2-1713, 45-7-216.

Confidentiality of cancer reporting system information, §§ 68-1-1006, 68-1-1007.

Confidentiality of collection services information, § 62-20-119.

Confidentiality of contractors' financial statements, § 62-6-124.

Confidentiality of court of the judiciary proceedings, Tenn. R. Ct. of Judiciary 7.

Confidentiality of disclosure information by mortgagee, §§ 47-23-101, 47-23-102.

Confidentiality of financial information, § 45-2-1717.

Confidentiality of hazardous chemical trade secrets, § 50-3-2013.

Confidentiality of juvenile court predisposition report, Tenn. R. Juv. P. 33.

Confidentiality of legislative computer system information, § 3-10-108.

Confidentiality of marital and family therapist communications with client, § 63-22-114.

Confidentiality of medical misconduct information, § 63-1-117.

Confidentiality of medical records provided for workers' compensation benefit review conferences and settlement, § 50-6-131.

Confidentiality of medical review committee records and proceedings, § 63-6-219.

Confidentiality of mentally ill patient records, § 33-3-104.

Confidentiality of name of owner or operator of trade or business on license or application, § 67-4-722.

Confidentiality of polygraph examiner information, § 62-27-124.

Confidentiality of registration of public obligations, owner's identity, § 9-19-109.

Confidentiality of research records and materials, § 49-7-120.

Confidentiality of savings and loan association information, §§ 45-3-807, 45-3-814, 45-3-1308.

Confidentiality of sources of body parts for transplantation, § 68-30-111.

Confidentiality of supreme court disciplinary enforcement proceedings, Tenn. R. Sup. Ct. 9, § 25.

Confidentiality of tax returns and tax information, title 67, ch. 1, part 17.

Confidentiality of Tennessee Competitive Export Corporation information, § 13-27-113.

Confidentiality of writings, records or tangible objects obtained by attorney general, § 8-6-407.

Consolidated retirement system, confidentiality of medical records, § 8-36-509.

Consumer protection enforcement, confidentiality of information, § 47-18-106.

Coordinator of elections, investigatory reports, confidentiality, § 2-11-202.

Deferred compensation plans, government employees, confidentiality of records, § 8-25-109.

Dental peer review committee proceedings, confidentiality, § 63-5-131.

Department of economic and community development, confidentiality of proprietary information, §§ 4-3-712, 4-3-730.

Department of financial institutions, confidentiality of information, § 45-2-1603.

Disability retirement, confidentiality of medical records, § 8-36-509.

Divorce, confidentiality of communications during mediation proceedings, § 36-4-130.

Domestic insurers, delinquency proceedings against, § 56-9-202.

Drug-free workplace programs, confidentiality of records, § 50-9-109.

Employment security law enforcement, confidentiality, § 50-7-701.

Expunging records, § 40-32-101.

Fire death victims, confidentiality of blood test results, § 38-7-116.

Food stamp recipients, confidentiality, § 71-5-304.

Foster care, confidentiality of records obtained for human service's annual report, § 37-2-411.

Foster care proceedings, confidentiality of records, § 37-2-408.

Foster care, review board records, § 37-2-408.

Hazardous waste management, confidentiality of information, § 68-212-109.

Health insurance entities, confidentiality of individual medical information, § 68-1-108.

HIV testing, confidentiality of test results, § 39-13-521.

Hospital records not public records, § 68-11-304.

Infectious diseases, medical laboratory reports, confidentiality, § 68-29-107.

Inmate exposure to disease, confidentiality of records, § 41-51-102.

Inmates in private prison facilities, confidentiality of records, § 41-24-116.

Insurance examinations, confidentiality of records, § 56-1-411.

Insurance holding companies, confidentiality, §§ 56-11-203, 56-11-204, 56-11-208.

Insurers' actuarial review, § 56-1-402.

Insurers' material transactions, reports, § 56-10-301.

Insurers, reciprocity of commissioner of commerce and insurance with out-of-state confidentiality requirements, § 56-44-105.

Investigative files relevant to criminal actions, confidentiality, Tenn. R. Crim. P. 16.

Legal services office, confidentiality of records, § 3-12-105.

Legislative computer system, confidentiality of information, § 3-10-108.

Library records, confidentiality, chapters 1, 3, 4 and 5 of this title.

Master social workers, privileged communications, § 63-23-107.

Medical malpractice settlement excesses, confidentiality of insurance company reports, § 56-3-111.

Money order issuers, confidentiality of reports of investigations and examinations, § 45-7-216.

Money order issues, reports, § 45-7-216.

Occupational health and safety violations and enforcement, confidentiality, §§ 50-3-304, 50-3-504, 50-3-914.

Office of program evaluation, confidentiality of work papers, § 3-14-109.

Parolee records, confidentiality, § 40-28-119.

Patient's Privacy Protection Act, title 68, ch. 11, pt. 15.

Payroll records, confidentiality, § 12-4-414.

Penalty for divulging property tax information furnished local authorities, § 67-5-401.

Professions of the healing arts, confidentiality, § 63-22-114.

Profit sharing or salary reduction plans, confidentiality of medical records, § 8-25-307.

Profit sharing plans, government employees, confidentiality of records, § 8-25-307.

Psychologists, peer review committees, confidentiality, § 63-11-220.

Public obligations, confidentiality of identity of owner, § 9-19-109.

Public service commission regulation of railways, confidentiality, § 65-3-109.

Real estate insurance, confidentiality of information, § 47-23-101.

Records or papers in secretary of state's office relating to executive department and requiring secrecy, § 8-3-104.

Report from joint commission on accreditation of hospitals deemed confidential record, § 68-11-210.

Risk-based capital reports, confidentiality, § 56-46-109.

Securities act violations, confidentiality, § 48-2-118.

Sexually transmitted diseases, confidentiality of information, § 68-10-101.

State geologist, mineral test holes, confidentiality of information, §§ 60-1-504, 60-1-505.

Statutory rape, reports, § 38-1-304.

Student achievement tests and answers, confidentiality, §§ 49-1-302, 49-6-6001.

Taxpayer statements, reports, returns, audits, etc., confidentiality, § 67-4-722.

Vital records, confidentiality, § 68-3-205.

Waste reduction progress report not a public record, §§ 68-212-306, 68-212-311.

Water quality control enforcement, confidentiality, § 69-3-113.

Welfare recipient lists, confidentiality, § 71-1-118.

Section to Section References. This section is referred to in §§ 4-6-140, 41-51-102, 41-51-103, 68-11-210, 68-30-111, 68-55-204.

Textbooks. Tennessee Jurisprudence, 14 Tenn. Juris., Hospitals, § 2.

Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppard), § 501.10.

Law Reviews. Updating Tennessee's Public Records Law (Douglas Pierce), 24 No. 5 Tenn. B.J. 24 (1988).

Cited: Board of Educ. v. Memphis Publishing Co., 585 S.W.2d 629 (Tenn. Ct. App. 1979); Memphis Publishing Co. v. Holt, 710 S.W.2d 513 (Tenn. 1986); Griffin v. City of Knoxville, 821 S.W.2d 921 (Tenn. 1991); State v. Baker, 842 S.W.2d 261 (Tenn. Crim. App. 1992); Fann v. City of Fairview, 905 S.W.2d 167 (Tenn. Ct. App. 1994).

NOTES TO DECISIONS

Analysis

1. Designation as Confidential.
2. Treatment by Agencies.
3. Public Construed.
4. Bureau of Investigation Records.
5. Attorney Work Product.
6. Inmates' Records.

1. Designation as Confidential.

Only the general assembly can declare certain records to be confidential. *Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs.*, 621 S.W.2d 763 (Tenn. Ct. App. 1981).

The general assembly can decide that its policy of access is too broad and close the door on access to certain records. *Thompson v. Reynolds*, 858 S.W.2d 328 (Tenn. Ct. App. 1993).

One record contained sufficient facts for the chancellor to conclude that the records in dispute were confidential. *Thompson v. Reynolds*, 858 S.W.2d 328 (Tenn. Ct. App. 1993).

2. Treatment by Agencies.

Those records which have been declared by the general assembly to be confidential shall be so treated by the agencies maintaining them whether they be active or in storage. *Cleveland Newspapers, Inc. v. Bradley County Mem. Hosp. Bd. of Dirs.*, 621 S.W.2d 763 (Tenn. Ct. App. 1981).

3. Public Construed.

Courts, grand juries, and district attorneys are not embraced in the term "public" as used in this section. *State v. Fears*, 659 S.W.2d 370 (Tenn. Crim. App. 1983), cert. denied, 465 U.S. 1082, 104 S. Ct. 1450, 79 L. Ed. 2d 768 (1984).

The term "members of the public" does not include the courts and public officials, in the performance of their official duties. *Huntsville Util. Dist. v. General Trust Co.*, 839 S.W.2d 397 (Tenn. Ct. App. 1992).

4. Bureau of Investigation Records.

Denial of such parts of records as constitute investigation records of the Tennessee bureau of investigation upheld. *Abernathy v. Whitley*, 838 S.W.2d 211 (Tenn. Ct. App. 1992).

5. Attorney Work Product.

Transcripts of depositions taken by attorney for city and county in bankruptcy proceedings were not "attorney work product" excepted from public inspection under Public Records Act. *Memphis Publishing Co. v. City of Memphis*, 871 S.W.2d 681 (Tenn. 1994).

6. Inmates' Records.

Inmates' records "shall be open for public inspection" and are therefore public records for purposes of admission. *State v. Wingard*, 891 S.W.2d 628 (Tenn. Crim. App. 1994).

COLLATERAL REFERENCES

Validity, construction, and application of statutory provisions relating to public access to police records. 82 A.L.R.3d 19.

10-7-505. Denial of access - Procedures for obtaining access - Court orders - Injunctions - Appeals - Liability for nondisclosure.

(a) Any citizen of Tennessee who shall request the right of personal inspection of any state, county or municipal record as provided in § 10-7-503, and whose request has been in whole or in part denied by the official and/or designee of the official or through any act or regulation of any official or designee of any official shall be entitled to petition for access to any such record and to obtain judicial review of the actions taken to deny the access.

(b) Such petition shall be filed in the chancery court for the county in which the county or municipal records sought are situated, or in any other court of that county having equity jurisdiction. In the case of records in the custody and control of any state department, agency or instrumentality, such petition shall be filed in the chancery court of Davidson County; or in the chancery court for the county in which the state records are situated if different from Davidson County, or in any other court of that county having equity jurisdiction; or in the chancery court in the county of the petitioner's residence, or in any other court of that county having equity jurisdiction. Upon filing of the petition, the court shall, upon request of the petitioning party, issue an order requiring the defendant or respondent party or parties to immediately appear and show cause, if any they have, why the petition should not be granted. A formal written response to the petition shall not be required, and the generally applicable periods of filing such response shall not apply in the interest of expeditious hearings. The court may direct that the records being sought be submitted under seal for review by the court and no other party. The decision of the court on the petition shall constitute a final judgment on the merits.

(c) The burden of proof for justification of nondisclosure of records sought shall be upon the official and/or designee of the official of those records and the justification for the nondisclosure must be shown by a preponderance of the evidence.

(d) The court, in ruling upon the petition of any party proceeding hereunder, shall render written findings of fact and conclusions of law and shall be empowered to exercise full injunctive remedies and relief to secure the purposes and intentions of this section, and this section shall be broadly construed so as to give the fullest possible public access to public records.

(e) Upon a judgment in favor of the petitioner, the court shall order that the records be made available to the petitioner unless:

(1) There is a timely filing of a notice of appeal; and

(2) The court certifies that there exists a substantial legal issue with respect to the disclosure of the documents which ought to be resolved by the appellate courts.

(f) Any public official required to produce records pursuant to this part shall not be found criminally or civilly liable for the release of such records nor shall a public official required to release records in such public official's custody or under such public official's control be found responsible for any damages caused, directly or indirectly, by the release of such information.

(g) If the court finds that the governmental entity, or agent thereof, refusing to disclose a record knew that such record was public and willfully refused to disclose it, such court may, in its discretion, assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the nondisclosing governmental entity.

[Acts 1957, ch. 285, § 3; 1975, ch. 127, § 2; 1977, ch. 152, § 4; T.C.A., § 15-306; Acts 1984, ch. 929, §§ 2, 4; 1985, ch. 342, § 1; 1988, ch. 888, § 1.]

Cross-References. Penalty for misdemeanor, §§ 39-11-114, 40-35-111.

Law Reviews. Updating Tennessee's Public Records Law (Douglas Pierce), 24 No. 5 Tenn. B.J. 24 (1988).

Cited: Creative Restaurants, Inc. v. City of Memphis, 795 S.W.2d 672 (Tenn. Ct. App. 1990); Memphis Publishing Co. v. Shelby County Health Care Corp., 799 S.W.2d 225 (Tenn. Ct. App. 1990); Thompson v. Reynolds, 858 S.W.2d 328 (Tenn. Ct. App. 1993).

NOTES TO DECISIONS

Analysis

1. Application.
 - 1.5. "Willful."
2. Police Records.
3. Bureau of Investigation Records.

1. Application.

This section does not limit the scope of § 10-7-503, nor does it give the courts leeway to exempt records from public inspection. Memphis Publishing Co. v. Holt, 710 S.W.2d 513 (Tenn. 1986).

1.5. "Willful."

Defendant's refusal of access was not "willful" within the meaning to this section. Abernathy v. Whitley, 838 S.W.2d 211 (Tenn. Ct. App. 1992).

Where there was question whether transcripts of depositions taken by attorney for county and city in bankruptcy proceedings were "records" under the Public Records Act, it could not be said that city and county willfully refused to disclose them, making them liable for attorneys' fees and costs pursuant to subsection (g) of this section. *Memphis Publishing Co. v. City of Memphis*, 871 S.W.2d 681 (Tenn. 1994).

2. Police Records.

The evidence test is not the appropriate test to be applied in determining whether material taken into custody by a police department has been received in connection with transacting official business. *Griffin v. City of Knoxville*, 821 S.W.2d 921 (Tenn. 1991).

3. Bureau of Investigation Records.

Denial of such parts of records as constitute investigation records of the Tennessee bureau of investigation upheld. *Abernathy v. Whitley*, 838 S.W.2d 211 (Tenn. Ct. App. 1992).

10-7-506. Public records having commercial value.

(a) In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

(b) Within ten (10) days of the release of public records originating in the office of the county assessor of property, the state agency releasing such records shall notify, in writing, the assessor of property of the county in which such records originated of the records released and the name and address of the person or firm receiving the records. The reporting requirements of this subsection shall not apply when county or city summary assessment information is released.

(c) (1) If a request is made for a copy of a public record that has commercial value, and such request requires the reproduction of all or a portion of a computer generated map or other similar geographic data that was developed with public funds, the legislative body of any county to which this subsection applies may establish and impose reasonable fees for the reproduction of such record, in addition to any fees or charges that may lawfully be imposed pursuant to this section. The additional fees authorized by this subsection may not be assessed against individuals who request copies of records for themselves or when the record requested does not have commercial value.

(2) The additional fees authorized by this subsection shall relate to the actual development costs of such maps or geographic data and may include:

(A) Labor costs;

(B) Costs incurred in design, development, testing, implementation and training; and

(C) Costs necessary to ensure that the map or data is accurate, complete and current, including the cost of adding to, updating, modifying and deleting information.

(3) The total collections for the additional fees authorized by this subsection shall not exceed the total development costs of the system producing the maps or geographic data. Once such additional fees have paid the total development costs of the system, such fees shall be adjusted to generate only the amount necessary to maintain the data and ensure that it is accurate, complete and current for the life of the particular system.

(4) As used in this subsection, "commercial value" means a record that may be used for commercial real estate development or related activities and for which a monetary profit may be realized.

(5) The provisions of this subsection shall apply only in counties having a population of not less than three hundred thousand (300,000) nor more than four hundred eighty thousand (480,000) according to the 1980 federal census or any subsequent federal census; and to municipally owned rate-based utilities in counties having a population of not less than seventy-seven thousand eight hundred (77,800) nor more than seventy-eight thousand (78,000) according to the 1990 federal census or any subsequent federal census; to municipally owned rate-based utilities in counties having a population of not less than seventy-three thousand six hundred (73,600) nor more than seventy-three thousand nine hundred (73,900), according to the 1990 federal census or any subsequent federal census; and in counties having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal census or any subsequent federal census.

[Acts 1957, ch. 285, § 4; T.C.A., § 15-307; Acts 1986, ch. 546, § 1; 1991, ch. 433, § 1; 1992, ch. 682, § 1; 1997, ch. 97, § 1.]

Amendments. The 1997 amendment added "and to municipally owned rate-based utilities in counties having a population of not less than seventy-seven thousand eight hundred (77,800) nor more than seventy-eight thousand (78,000) according to the 1990 federal census or any subsequent federal census; to municipally owned rate-based utilities in counties having a population of not less than seventy-three thousand six hundred (73,600) nor more than seventy-three thousand nine hundred (73,900), according to the 1990 federal census or any subsequent federal census; and in counties having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal census or any subsequent federal census" at the end of (c)(5).

Effective Dates. Acts 1997, ch. 97, § 2. April 16, 1997.

Cross-References. Public records having commercial value, § 7-52-135.

Records or papers in office of secretary of state, § 8-3-104.

Section to Section References. This section is referred to in §§ 7-52-135, 10-7-504.

Law Reviews. Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

Attorney General Opinions. Computerized voter registration lists - Public Records Act, OAG 92-63 (10/8/92).

Cited: Creative Restaurants, Inc. v. City of Memphis, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

10-7-507. Records of convictions of traffic and other violations - Availability.

Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, county or municipal public offenses shall make available to any citizen, upon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies.

[Acts 1974, ch. 581, § 1; T.C.A., § 15-308.]

Law Reviews. Protecting Privacy From Government Invasion: Legislation at the Federal and State Levels, 8 Mem. St. U.L. Rev. 783.

10-7-508. Access to records - Records of archival value - Retention or disposal of records.

(a) The director of the records management division, the state librarian and archivist, and the comptroller of the treasury or the comptroller's designated representative for purposes of audit, shall be accorded access to and may examine and receive any public records or writings, whether or not they are subject to public inspection. They shall maintain inviolate any privileged or confidential information so acquired and any record or writing so defined by law.

(b) The state librarian and archivist or an archivist designated by the state librarian and archivist and the director of records management or a records analyst designated by the director of records management shall be accorded access to and may examine any confidential public records for the purpose of determining, in consultation with the agency head or a representative of the agency which has title to the records, whether such records are records of archival value or whether such records are properly filed or designated as confidential. If the state librarian and archivist or such representative, the director of records management or such representative and the agency head or such representative should determine that certain administrative or otherwise open public records have been inappropriately filed and designated as confidential public records, then such records shall be removed from the designation of confidential and filed within the appropriate level of access designation. Such access to appraise the archival value of such confidential records shall be provided for in the scheduling of retention periods through appropriate records disposition authorizations which are reviewed and approved by the public records commission.

(c) Records determined to be of archival value shall be retained as provided in rules and regulations for records management of records of archival value of the public records commission and those confidential records determined not to be of archival value shall be disposed of by authorized means and in accordance with approved records disposition authorizations.

[Acts 1978, ch. 544, § 2; T.C.A., § 15-309; Acts 1984, ch. 947, § 3.]

Cross-References. Confidential public record defined, § 10-7-301.

Confidential records, § 10-7-504.

Records of archival value defined, § 10-7-301.

Section to Section References. This section is referred to in §§ 45-2-1603, 45-8-221, 62-6-124.

10-7-509. Disposition of records.

(a) The disposition of all state records shall occur only through the process of an approved records disposition authorization.

(b) Records authorized for destruction shall be disposed of according to the records disposition authorization and shall not be given to any unauthorized person, transferred to another agency, political subdivision, private or semiprivate institution.

[Acts 1978, ch. 544, § 2; T.C.A., § 15-310.]

10-7-510. Transfer of documents from criminal cases to not-for-profit depositories.

(a) The district attorney general of a judicial district, after giving written notice of the proposed transfer prior to such transfer to the presiding officer of the legislative body in which such record, document or evidence is located, may permanently transfer custody and ownership of all original records, documents and physical evidence in the district attorney general's possession that was collected, compiled and maintained in a particular criminal case or investigation to a university or other institution of higher education, museum, library or other not-for-profit corporation organized for the primary purpose of preserving and displaying items of historical significance, if:

(1) The university, museum, library or not-for-profit corporation has formally requested transfer of the records, documents and evidence in a particular case or investigation;

(2) The documents, records and evidence requested are, in the opinion of such district attorney general, of historical significance and their display would enhance public understanding, education or appreciation of a particular time or event in history;

(3) The documents, records and evidence requested have by operation of law become public records; and

(4) The district attorney general or clerk duplicates or photographs all documents and records transferred in a manner approved by the public records commission.

(b) If such original records, documents or physical evidence are in the sole custody of the criminal court clerk of any judicial district, such clerk may permanently transfer custody and ownership of such records, documents or physical evidence with the approval of the district attorney general of the appropriate judicial district, after giving written notice of the proposed transfer prior to such transfer to the presiding officer of the legislative body for the jurisdiction in which such record, document or evidence is located.

(c) If it is determined that such documents, records and evidence are to be transferred, the district attorney general shall make the final decision as to the date, time and method by which such transfer is effectuated.

(d) Upon the transfer of such documents, records and evidence as provided by this section, any party desiring to view such material shall do so at the site where the material has been transferred.

(e) As used in this section, "historical significance" means that the event giving rise to the documents, records or evidence being transferred occurred twenty (20) years or more prior to April 18, 1994.

(f) This section does not apply to records or documents which are made confidential by any provision of law.

[Acts 1994, ch. 826, § 1.]

PART 6

PUBLIC APPOINTMENTS

10-7-601. Short title.

This part shall be known and may be cited as the "Open Appointments Act."

[Acts 1992, ch. 766, § 2.]

Section to Section References. Sections 10-7-601 - 10-7-606 are referred to in § 10-7-602.

10-7-602. Definitions.

As used in this §§ 10-7-601 - 10-7-606, unless the context otherwise requires:

(1) "Agency" means a state board, commission, council, committee, authority, task force, or other similar multi-member agency created by statute, having state-wide jurisdiction. "Agency" does not include any such entity composed entirely of ex officio members or popularly elected members, except where such agency includes one (1) or more members of the general assembly. "Agency" also does not include any interstate compact.

(2) "Secretary" means the secretary of state;

(3) (A) "Vacancy" or "vacant agency position" means:

(i) A vacancy in an existing agency; or

(ii) A new, unfilled agency position.

(B) "Vacancy" does not mean:

(i) A vacant position on an agency composed exclusively of persons employed by a political subdivision or another agency; or

(ii) A vacancy to be filled by a person required to have a specific title or position.

[Acts 1992, ch. 766, § 3; 1993, ch. 162, § 1.]

10-7-603. Data provided secretary.

The chair of an existing agency, or the appointing authority for the members of a newly created agency, shall provide the secretary of state, on forms prepared and distributed by the secretary of state, with the following data pertaining to that agency:

(1) The name of the agency, its mailing address, and telephone number;

(2) The legal authority for the creation of the agency and the name of the person appointing agency members;

- (3) The powers and duties of the agency;
- (4) The number of authorized members, together with any prescribed restrictions on eligibility, such as employment experience or geographical representation;
- (5) The dates of commencement and expiration of the membership terms and the expiration date of the agency, if any;
- (6) The compensation of members, and appropriations or other funds available to the agency;
- (7) The regular meeting schedule, if any, and approximate number of hours per month of meetings or other activities required of members;
- (8) The roster of current members, including mailing addresses and telephone numbers; and
- (9) A breakdown of the membership showing distribution by county and legislative district and, only if the member has voluntarily supplied the information, the sex and race of the members. Such breakdown shall not include such information on ex officio and popularly elected members.

[Acts 1992, ch. 766, § 4; 1993, ch. 162, § 2.]

Section to Section References. This section is referred to in § 10-7-605.

10-7-604. Updating and publishing data.

The secretary of state shall provide for annual updating of the required data and shall annually arrange for the publication of the compiled data from all agencies on or about November 15 of each year. Copies of the compilation shall be delivered to the governor and the general assembly. Copies of the compilation shall be made available by the secretary to any interested person at cost, and copies shall be available for viewing by interested persons.

[Acts 1992, ch. 766, § 5.]

10-7-605. Vacancies.

The chair of an existing agency shall notify the secretary of a vacancy scheduled to occur in the agency as a result of the expiration of membership terms, at least forty-five (45) days before the vacancy occurs. The chair of an existing agency shall give written notification to the secretary of each vacancy occurring as a result of newly created agency positions and of every other vacancy occurring for any reason other than the expiration of membership terms as soon as possible upon learning of the vacancy and in any case within fifteen (15) days after the occurrence of the vacancy. The appointing authority for newly created agencies shall give written notification to the secretary of all vacancies in the new agency within fifteen (15) days after the creation of the agency. Monthly, the secretary shall publish a list of all vacancies of which the secretary has been so notified. Notice of a vacancy shall be published until the appointing authority notifies the secretary that the vacancy has been filled. Such notice shall be given within fifteen (15) days of the appointment. One (1) copy of the listing

shall be made available at the office of the secretary to any interested person. The secretary shall distribute by mail copies of the listings to requesting persons. The secretary may charge a duplication fee to cover the actual cost of providing such listings.

[Acts 1992, ch. 766, § 6; 1993, ch. 162, § 3.]

10-7-606. Report.

Together with the compilation required in § 10-7-603, the secretary shall annually deliver to the governor and the legislature a report containing the following information:

- (1) The number of vacancies occurring in the preceding year;
- (2) The number of vacancies occurring as a result of scheduled ends of terms, unscheduled vacancies and the creation of new positions;
- (3) Breakdowns by county, legislative district and, if known, the sex and race for members whose agency membership terminated during the year and appointees to the vacant positions; and
- (4) The names of any agencies which have not complied with the requirements of this part.

[Acts 1992, ch. 766, § 7.]

10-7-607 - 10-7-610. [Reserved.]

10-7-611. Proportionate representation of minority and nonminority groups on appointed bodies.

(a) It is the intent of the general assembly to recognize the importance of balance in the appointment of minority and non-minority persons to membership on statutorily created decision-making and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. Furthermore, the general assembly recognizes that statutorily created decision-making and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for Tennessee, and the selection of well-qualified candidates is the paramount obligation of the appointing authority.

(b) In appointing members to any statutorily created decision-making or regulatory board, commission, council, or committee of the state, the appointing authority should make a conscientious effort to select, from among the most qualified persons, those persons whose appointment would ensure that the membership of the board, commission, council, or committee accurately reflects the proportion that each group of minority persons represents in the population of the state as a whole, or, in the case of a local board, commission, council, or committee, in the population of the area represented by the board, commission, council, or committee, as determined pursuant to the most recent federal decennial census, unless the law regulating such appointment requires otherwise, or persons of the under-represented minority group cannot be recruited. If the size of the board, commission, council, or committee precludes an

accurate representation of all minority groups, appointments should be made which conform to the requirements of this section insofar as possible. If there are multiple appointing authorities for the board, commission, council, or committee, they shall consult with each other to assure compliance with this section.

(c) Each appointing authority described in subsection (c) shall submit a report to the secretary of state annually by December 1, which discloses the number of appointments made during the preceding year from each minority group and the number of non-minority appointments made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. A copy of the report shall be submitted to the governor, the speaker of the house of representatives, and the speaker of the senate. In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment who shall ensure that information describing each applicant's race, ethnicity, gender, and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law.

(d) This section applies to appointments and reappointments made after July 1, 1997. It does not prohibit a member of a decision-making or regulatory board, commission, council, or committee from completing a term being served as such member when this section takes effect. A person appointed to a decision-making or regulatory board, commission, council, or committee before July 1, 1997, may not be removed from office solely for the purpose of meeting the requirements of this section.

[Acts 1997, ch. 328, § 1.]

Effective Dates. Acts 1997, ch. 328, § 2. July 1, 1997.

CHAPTER 8 CONFIDENTIALITY OF RECORDS

Section

10-8-101. Definitions.

10-8-102. Disclosure prohibited - Exceptions.

10-8-103. Applicability.

10-8-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Library" means:

(A) A library that is open to the public and established or operated by:

(i) The state, a county, city, town, school district or any other political subdivision of the state;

(ii) A combination of governmental units or authorities;

(iii) A university or community college; or

(B) Any private library that is open to the public; and

(2) "Library record" means a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific information or materials from such library. "Library record" does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

[Acts 1988, ch. 889, § 1.]

Comparative Legislation.Confidentiality of records:

Ark. Code § 21-8-301 et seq.

Ga. O.C.G.A. § 50-18-95.

Miss. Code Ann. § 21-15-37.

Mo. Rev. Stat. § 109.280.

Va. Code § 42.1-78.

10-8-102. Disclosure prohibited - Exceptions.

(a) Except as provided in subsection (b), no employee of a library shall disclose any library record that identifies a person as having requested or obtained specific materials, information, or services or as having otherwise used such library. Such library records shall be considered an exception to the provisions of § 10-7-503.

(b) Library records may be disclosed under the following circumstances:

- (1) Upon the written consent of the library user;
- (2) Pursuant to the order of a court of competent jurisdiction; or
- (3) When used to seek reimbursement for or the return of lost, stolen, misplaced or otherwise overdue library materials.

[Acts 1988, ch. 889, § 1.]

10-8-103. Applicability.

The provisions of this chapter shall apply to libraries included within the provisions of chapters 1 and 3-5 of this title.

[Acts 1988, ch. 889, § 1.]